

Appendix A: Written Comments Received by DEQ during the Public Comment Period

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-UL-**Western Environmental Trade Association****RECEIVED**

OCT 27 2006

**DEQ
DIRECTOR'S OFFICE**

October 27, 2006

Board of Environmental Review
1520 E. 6th Ave.
P.O. Box 200901
Helena, MT 59620-0901

Re: Written Comments on the Gallatin River ORW DEIS and Proposed Rule

Dear Board Members:

We, the undersigned, represent the Western Environmental Trade Association, the Montana Association of REALTORS®, the Montana Contractors' Association, and the Montana Building Industry Association. We hereby submit the following comments regarding the Draft Environmental Impact Statement (DEIS) and proposed administrative rule regarding declaring a portion of the Gallatin River as an Outstanding Resource Water (ORW) under state law.

In 1995 we supported the creation of a legislative process to designate ORW's in Montana as well as supporting significant legislative clarifications made to the ORW process in 2003. And, while we still support a strong and clear process to create ORW's, the information provided in the DEIS is inadequate for us, the DEQ, the public, or you, to determine whether or not the Gallatin needs the additional protection, and it is insufficient to understand the impacts of such designation.

The Board is under an affirmative statutory duty to analyze these issues closely. And the Board is authorized to deny a petition to create an ORW if:

based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters classification petition would cause significant adverse environmental, social, or economic impacts.

75-5-316(8)(a)(ii), MCA.

As set forth in more detail in the attachments, the environmental, social, and economic impacts of the proposed ORW designation have yet to be adequately analyzed. Also, the proposed rule is unworkable as drafted and suffers from procedural deficiencies. Therefore, we recommend that both the rule and DEIS be sent back to the DEQ for additional study and a re-hearing.

We appreciate the Board's careful consideration of these issues and look forward to continuing to work with you on this important matter.

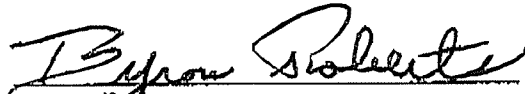
Sincerely,



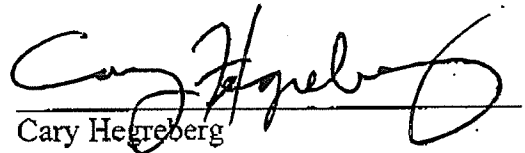
Don Allen
Executive Director
Western Environmental Trade Association



Peggy Trehl
Chief Executive Officer
Montana Association of REALTORS®



Byron Roberts
Executive Director
Montana Building Industry Association



Cary Hegreberg
Executive Director
Montana Contractors' Association

Enclosures: Kakuk Memo
Watts Talking Points

LEGAL MEMO

TO: DON ALLEN, EXECUTIVE DIRECTOR, WESTERN
ENVIRONMENTAL TRADE ASSOCIATION (WETA)
CARY HEGREBERG, EXECUTIVE DIRECTOR, MONTANA
CONTRACTORS' ASSOCIATION
GLENN OPPEL, GOVERNMENT AFFAIRS DIRECTOR,
MONTANA ASSOCIATION OF REALTORS® (MAR)
DUSTIN STEWART, GOVERNMENT AFFAIRS DIRECTOR,
MONTANA BUILDING INDUSTRIES ASSOCIATION (MBIA)
FROM: MICHAEL S. KAKUK, ATTORNEY
RE: GALLATIN RIVER ORW EIS
DATE: OCTOBER 26, 2006

PURPOSE AND DISCLAIMER

You asked me to review and comment on DEQ's Gallatin River ORW Draft EIS (DEIS) and the proposed rule. This is provided below. You plan on using this memo as part of your written testimony regarding these important issues.

PROPOSED RULE ANALYSIS

The proposed rule states:

17.30.638 OUTSTANDING RESOURCE WATERS – PROHIBITIONS

(1) Any new or increased point source discharge that would result in a permanent change in water quality of an ORW is prohibited. This prohibition does not apply to new or increased point source discharges to an ORW if the point source discharge was approved, authorized, licensed, or permitted by the department or local government body prior to the effective date of the ORW designation.

(2) Any new or increased source discharging to ground water that has a direct hydrologic connection to an ORW is prohibited if the discharge, either by itself or after taking into consideration cumulative effects of other sources that are subject to the prohibitions of the ORW designation, would result in a permanent, measurable change in the water quality of the ORW. This prohibition does not

apply to new or increased sources with a direct hydrologic connection to an ORW if the source was approved, authorized, licensed, or permitted by the department or local government body prior to the effective date of the ORW designation.

Subsection (1) simply restates the statute regarding point-source discharges to an ORW and “grandfathers” or exempts existing sources from the regulation. Subsection (2) however, is not so straightforward.

CUMULATIVE EFFECTS STANDARD

First, subsection (2) significantly changes DEQ’s current regulatory approach by adding language that prohibits a discharge:

if the discharge, either by itself or after taking into consideration cumulative effects of other sources that are subject to the prohibitions of the ORW designation, would result in a permanent, measurable change in the water quality of the ORW.

Emphasis added.

As testified to by DEQ personnel at the public hearing on October 25th, this required “consideration” of other sources is a new policy and the potential impacts of such a policy have not been adequately analyzed in the DEIS.

DIRECT HYDROLOGIC CONNECTION

DEQ’s proposed rule also adds a new “direct hydrologic connection” standard to the existing review process. This new “direct connection” standard is not defined, and even more important, as set out in the below hypothetical, it is unworkable as written.

1. A developer with a project anywhere in the ORW area (not just the footprint identified in the DEIS) submits an application for a septic system non-deg review to DEQ. Such application includes a finding and supporting evidence, signed by a hydrologist, that there is no “direct hydrologic connection” with surface water and that therefore a non-deg authorization is allowed.

2. DEQ, after reviewing the application, agrees that there is no direct connection and a non-deg authorization should issue.
3. Opponents to the development submit their own analysis and evidence, signed by their hydrologist, showing that there is a "direct hydrologic connection" to surface water and that therefore the non-deg authorization should not issue.
4. Even if the developer "wins" this argument with DEQ, the developer loses because DEQ's decision will be appealed by the opponents.

The language as proposed by DEQ leads, inevitably, to inconsistencies in application and to a total lack of predictability for local governments, landowners in general, and the development community in particular.

Note: There was some initial degree of confusion regarding the regulatory effect of the "footprint" identified in the DEIS. Initially, in my discussions with DEQ personnel, I was told that there is no uncertainty where a direct hydrologic connection exists. DEQ said they've done the math and drawn the map that indicates who's in and who's out of the footprint. I.e., the DEQ knew where non-deg authorizations could and could not be issued. This map, Figure 2-1, is included in the DEIS on page 21.

I had serious concerns, which I related to DEQ, regarding the regulatory effect of the map -- especially regarding the lack of proper notice to those residents located within the footprint and therefore immediately and directly affected by the proposed rule.

However, the day before the public hearing, the DEQ informed me that the map had, in essence, no regulatory effect and each application for a non-deg authorization would be handled as set forth above in this memo. (I.e., setting up the "dueling-hydrologists" scenario.) However, this confusion regarding the regulatory impact of the "footprint" also presents its own due process concerns.

If the DEQ itself was unsure of the regulatory impact of the map, I am certain that landowners were unsure as well. For example, how many landowners, looking at the map the way the DEQ did originally, thought that the ORW designation did not affect them since they were out of the "footprint"? Those landowners did not know that, under DEQ's most recent

interpretation of the proposed rule, it does not matter whether or not you are in the footprint -- the only thing that matters is whether or not you are in the watershed covered by the proposed ORW designation.

I believe that this confusion regarding the regulatory impact of the map has lead to a fatal lack of adequate notice to the public regarding the real impacts of an ORW designation, the DEIS, and the proposed rule.

DEIS ISSUES

A. Potential ORW Designation Impacts to Residential and Commercial Development

DEQ currently estimates that, under current DEQ water quality and local land use regulations, there are approximately 652 allowable new single family residences in the footprint. (DEIS at page E-4.) Despite language in the text of the DEIS regarding the minimal impacts to development should the ORW designation be adopted as proposed (see, for example, Section 4.4.3.1, at page 168), after extensive discussions with DEQ personnel, DEQ admits that the actual impacts of an ORW designation on development are most accurately depicted in Table 4.4-6, pages 170 and 171. These impacts are significant.

In brief, even using the most advanced on-site treatment process, less than one-third (approximately 32%) of the development currently allowable could take place within the footprint. It is only through zero-discharge, e.g., holding tanks or using centralized sewer systems, that the full currently allowable build-out of 652 residences could be realized.

Both of the above zero-discharge options, i.e., holding tanks or centralized systems, raise significant issues themselves. For example, current county regulations do not allow holding tanks, and for a centralized sewer system to be economical, the residential densities would have to be increased significantly, and current county zoning does not allow that option in any zoned area.

Additionally, even if the county zoning were changed to allow higher density, such densities would be inconsistent with existing development patterns and would lead to other development-related impacts. None of these secondary impacts, including environmental, social, and economic impacts, have been analyzed in the DEIS.

Note: Actually, the impacts of an ORW designation may indeed restrict development even more than the Table 4.4-6 on page 170 reflects. DEQ states that phosphorus from septic systems is the limiting factor in granting non-deg authorizations in the footprint. (DEIS at page E-4.) However, it can be argued that the "advanced on-site treatment mitigation options" identified in Table 4.4-6 do not do anything to decrease the phosphorus discharged to the groundwater. For example, re-circulating sand filters reduce nitrates but do not significantly reduce phosphorus, and incinerating toilets do not usually include grey water, yet most phosphorus from households is normally found in the grey water. If these concerns are valid, the footprint would grow significantly.

Note: The entire DEIS is based on the "footprint" concept. I.e., the analysis of the potential impacts to residential and commercial development is based solely on the regulatory effect of an ORW designation within the footprint. However, as discussed above, there really is no "footprint". Without a site-specific "direct hydrologic connection" analysis, no one knows who's in and who's out. The bottom line being that the potential impacts of the ORW designation on development have not been, indeed, cannot be, adequately analyzed. This point, in and of itself, argues strongly for sending the DEIS back to the DEQ for additional study.

B. ORW DESIGNATION IMPACTS ON OTHER, NON-DEVELOPMENT RELATED, ACTIVITIES AND RESOURCES

I. TIMBER HARVESTING

It appears to be an unstated premise of the DEIS that an ORW designation does not affect timber harvests because such harvests are non-point sources and are regulated through the USDA Forest Service and or Montana Streamside Management Zone law. See, for example, Section 2.6 at page 27.

However, if DEQ believes such timber activities to be exempt from regulation under an ORW designation, DEQ should make such statement and provide the clear rationale for such statement.

II. MINING OPERATIONS

Similarly, the potential impacts of an ORW designation on mining activities are not adequately addressed in the DEIS.

The DEIS basically makes a bare assertion that:

There are no existing or planned mining operations in the ORW study area.

DEIS, Section 3.4.3.1, page 65.

A strong argument can be made that, even if DEQ is unaware of any planned mining activity, such activity remains legal and possible, and that the potential impact of an ORW designation on such mining must at least be addressed in the DEIS.

Note: It is unclear as to whether the DEIS statement regarding "mining" includes open cut mining, e.g. sand and gravel, or just hard rock mining. Since the phrase "open cut" does not appear in the document, and since I cannot find any reference to gravel mining, it would be logical to assume that the term "mining" in the DEIS includes open cut mining. However, that then makes me seriously question the accuracy of the bare statement that there are no "planned" gravel mines in the area.

After checking with the Montana Contractors' Association, there certainly are existing and planned gravel mines in the watershed. Additionally, from my discussions with DEQ staff, there are open cut mines that have discharge permits for water pumped out of the pit. This practice would be prohibited under the terms of an ORW.

These potential impacts have been ignored in the DEIS.

III. AIR QUALITY

The DEIS makes numerous references to the use of incinerating and/or composting toilets to maximize residential development potential within the footprint. The chart on page 170 even states that a total of 202 composting/incinerating toilets could be allowed. However, there is no mention of the potential air quality impacts resulting from the use of such

toilets. DEQ tells me that the use of such toilets would not require an air quality discharge permit. However, the impacts of such use could be challenged through nuisance laws or local regulations.

CONCLUSION

1. PROPOSED RULE:

- a. Unworkable As Drafted. As discussed in this memo, the proposed rule is unworkable as drafted in that it must inevitably lead to a permitting mêlée for every proposed residential or commercial development in the watershed.

Recommendation: The rule should be redrafted to provide some basic level of consistency and predictability and re-noticed for another public hearing.

- b. Due Process Concerns. Additionally, given the different interpretations of the rule and its interaction with the DEIS, specifically the confusion regarding the regulatory impact of the "footprint", there was lack of procedural due process in that there are landowners who did not know, in fact no landowner can actually determine, the potential impact of the proposed rule from the text of the rule and the DEIS.

Recommendation: The rule, redrafted or not, should be re-noticed for another public hearing.

2. DEIS

MEPA requires a hard look at the potential environmental, social, and economic impacts of creating an ORW as proposed by the DEIS. That has not been accomplished.

Recommendation: The DEIS should be sent back to DEQ for further and adequate analysis of the issues set forth in this memo.



W&A ECONOMIC CONSULTANTS

Talking Points for the ORW Study

Prepared by

Watts and Associates, Inc.



Watts and Associates, Inc.

4331 Hillcrest Road, Billings, MT 59101 406-252-7776



MAJOR CONCLUSIONS

The ORW is incorrect in its assumption that economic growth in Gallatin County is due "to the abundance of natural amenities and the protection of those amenities in the region." for multiple reasons. Initially, the ORW does not conduct a comprehensive study of the Gallatin County and its components. Consequently, the benefits of economic growth have been ignored. Secondly, the ORW estimates of the value of fishing and other recreation do not meet the standards published in the Federal Register. Consequently, the benefits of fishing and recreation are not reliable. Therefore, the conclusions of the ORW may be incorrect because they are not based on sound data and the ORW should be modified.



A complete analysis would conclude:

- Overall economic growth in Gallatin County since 1970 has been relatively rapid, but there were periods of little or no growth. The 1970s was period of consistent and rapid economic growth. The 1980s saw extreme volatility with at least two cases of zero growth or even declines. Since 1990, there has been renewed growth, with a cyclic downturn in 2001.
- Gallatin County has a diverse economic base, and trends in the basic industries easily explain the long-term and the short-run trends in the overall economy. The most important basic industries are Montana State University/State Government (30%), nonresident travel (20%) and manufacturing (19%).
- There are two recent important developments in Gallatin County's economic base. First, Bozeman has evolved into a second order trade center meaning that people from the surrounding rural areas travel to Bozeman to shop, see a doctor or dentist, or conduct other business. The spending of these nonresident shoppers are part of the economic base. Secondly, manufacturing has grown significantly and Bozeman has become Montana's high tech center.
- Nonlabor income (including dividends, interest and rents) is not statistically related to overall economic trends in Gallatin County.
- Construction has been particularly strong in recent years and has contributed to the rapid growth in the overall economy.
- From 2001 to 2004, the Big Sky area economy grew faster than Gallatin County; total wages rose at more than double the county-wide rate. Increased construction activity was a major contributor. The actual increase in construction activity may have been even larger than the data indicate. Many of the Big Sky area projects are on the Gallatin County-Madison County line, and may have been reported in Madison County (which also experienced significant reported growth in construction activity).
- There are no reliable county or sub-county data after 2004. Statewide figures show even greater growth in construction during 2005 and 2006. Contractors at Big Sky report they built more housing units in 2005 and were on track to beat that figure in 2006. Therefore, there is considerable evidence suggesting the Big Sky area economy continues to grow faster than the average for Gallatin County.

In summary, a complete and more detailed analysis of the Gallatin County economy suggests the rapid growth is not due "to the abundance of natural amenities and the protection of those amenities in this region." Rather, Gallatin County has a diverse and vibrant economy where the basic industries explain the short-run and long-run trends. In recent years, economic growth in the Big Sky area has exceeded the countywide average primarily due to increases in construction activity. Therefore, the benefits of economic growth are not discussed in the ORW.



I. OVERVIEW OF EIS GENERAL ISSUES

The Gallatin ORW Designation EIS (hereafter Report) contains only a partial and incomplete analysis of the Gallatin County economy and its components and, consequently, mistakenly attributes growth in population (and presumably other measures of economic growth) "to the abundance of natural amenities and the protection of those amenities in this region." (p. 86). The socioeconomic data presented in the Report consists of the following tables:

- Table 3-5.1 Population and median age in the study area. No date or original source reported. The text states "2005" but the (derived) sources are 2003a and 2003b.
- Table 3.5-2. Distribution of household income in Big Sky, West Yellowstone area, and Gallatin County. No date or original source reported.
- Table 3.5-2. Sources of Income in the Gallatin Canyon. No date or original source reported.
- Table 3.5-4 Housing affordability in Gallatin County, West Yellowstone CCD, and Big Sky CCP. No date or original source reported.
- Table 3-5.5 Employment by industry in Gallatin County and Gallatin Canyon areas displayed in terms of number of jobs per sector and percentage of the total. No date or original source—presumably uses U.S. Bureau of the Census definitions.
- All the data in these tables refer only to one year (which is not clearly specified) and do not allow for time series analysis or identification of trends.

A more complete analysis of the economic conditions in Gallatin County would examine:

- Population trends using U.S. Bureau of the Census data beginning with 1970
- Employment and employment trends, by industry using data from the U.S. Bureau of Economic Analysis or the Montana Department
- Labor income and personal income, and per capita income trends using data from the U.S. Bureau of Economic Analysis
- Identification and analysis of the industry structure and employment in the sub county economies of Big Sky and West Yellowstone using data from the County Business Patterns from the U.S. Bureau of the Census.
- Local Taxation – Including state and local taxes.
- Education Services and Current Capacity – Including school enrollments and trends, by district.
- Utilities (Existing and reserve capacity) – wastewater treatment facilities may be found in the discussion of alternatives section 4.
- Health and Safety
- Law Enforcement (Existing and Reserve Capacity).
- Fire Protection (Existing and Reserve Capacity).
- Emergency Medical Services (Existing and Reserve Capacity).
- Medical Facilities (Existing and Expansion Capacity).
- Population and Population Trends - Briefly discussed in Section 3.5.3.1 on page 86. No trend analysis.
- Housing (Existing and Reserve Capacity) – Briefly discussed on Page 88. No trend analysis or reserve capacity discussion.



II. OVERVIEW OF VALUATION ISSUES

The calculations of net economic value of fishing and other recreation on the Gallatin River utilize a controversial method and there is no documentation the studies cited in section 3.5.3.8 of the Report meet or exceed the guidelines published in the Federal Register for such research. Therefore, the estimates of net economic value may not be reliable and should not be included in the ORW.

- The contingent valuation method (CVM) is a controversial method to obtain people's values for non traded or non economic resources. The CVM utilizes survey research methods to directly ask respondents for the additional dollar amount they would have been willing to pay to enjoy or partake in a particular activity. There have been highly charged debates concerning whether the contingent valuation surveys can provide valid economic measures.
- The National Oceanic and Atmospheric Administration (NOAA) appointed in 1992 a distinguished panel of social scientists, chaired by now Nobel laureates Kenneth Arrow and Robert Solow, to critically evaluate the validity of contingent valuation estimation. The Panel provided an extensive set of guidelines for contingent valuation survey construction, administration, and analysis which was published in the Federal Register (January 15, 1993, vol. 58, no. 10, pp. 4601-4614). The panel said, "the more closely the guidelines are followed, the more reliable the result will be." (p. 4609) None of the reports considered by the Panel met the recommended guidelines.
- The Report utilizes findings from three studies to calculate net economic values:
 - Duffield et al 1987
 - Duffield et al.1988
 - Duffield et al 1990.All three of these studies were published before the NOAA guidelines were proposed in 1993. The authors of the report provide no documentation that these three reports meet or exceed the guidelines.
- The calculations of economic values of nonresident recreation use presented in section 3.5.3.8 do not allow for changes in price associated with growth in demand. For example, if there is more congestion due to an increase in users, the price would increase—making the recreation more valuable. There was an increase in demand, with no corresponding change in supply. Therefore, price would rise.

In summary, the ORW estimates of the value of fishing and other recreation do not meet the standards published in the Federal Register. Consequently, the benefits of fishing and recreation are not reliable.

S, wa?

Gallatin River ORW EIS Comments

October 27, 2006

PO Box 160821
Big Sky, MT 59716

Dear members of the Board,

My name is Katie Alvin, and I live with my husband and two children on riverfront property in Big Sky. We are caretakers for this property and also own businesses in the community. I have lived here full time for 13 years, my husband has lived here for 15 years, and we intend on raising our children here. I have degrees in environmental studies and soils science, both with land use planning emphases, and own a natural resource and community consulting business. My clients include local landowners, real estate agents, non-profits, and private businesses. My husband owns a local outdoor retail shop and is a fishing outfitter in the summer and a ski shop in the winter. This is all pertinent information, because I am writing on behalf of someone whose quality of life and livelihood depend on both pristine resources and thriving development.

I support the ORW designation and think it's the right thing to do. I think it is important that the Big Sky community take proactive steps to slow down and/or reverse documented decline in water quality. In particular, we need to look at new effluent standards for development in the parts of Big Sky that are outside the service of existing water treatment facilities.

The economic costs of this designation are not significant considering the cost of cleaning things up twenty years down the road. If you are listening to the plea of developers, I ask you to please consider where they live, and what their investment in the community is before you consider them to speak on behalf of Big Sky residents. People who truly represent this community work hard to make a living here, choose to raise our children here, put our money back into this community and its resources, and support responsible growth.

Thank you for your careful examination of the facts. I hope you make a wise decision.

Sincerely,

Katie Alvin

WQ, S, LU

Leanne Roulson

Form letter

From: JohnB01@aol.com
Sent: Thursday, October 26, 2006 1:02 PM
To: Hallsten, Greg
Subject: ORW comments

October 25, 2006

Department of Environmental Quality
Attn: Greg Halsten
PO Box 200901
Helena, MT 59620-0901
Copy sent via e-mail to: ghallsten@mt.gov

Board of Environmental Review
Attn: Board Secretary
1520 East Sixth Ave.
Helena, MT 59620-0901
Fax: 406-444-4386
Copy sent via e-mail: ber@mt.gov

Re: Gallatin River ORW

As a landowner and developer in Big Sky, I am writing to voice my concern and opposition to the adopting the proposed ARM and ORW status for the Gallatin River. I believe all landowners recognize the importance of maintaining the water quality in the Gallatin River and its tributaries. Adopting the ARM and ORW are not necessary to protect the quality of the Gallatin River. The Big Sky community has already illustrated that it is a good steward of the Gallatin River long before the EIS and petition for ORW designation. Landowners as well as those of us in the development business are motivated to continue to maintain these waters in a pristine condition because doing any less would negatively impact the desirability of Big Sky for current residents as well as future property owners not to mention the severely negative impact it would have on our business and ability to continue to work in Big Sky.

The following are some of the reasons I oppose the ORW:

1. The ORW will shut down almost all of the building and development business in the areas it deems are located within the "ORW footprint", which is defined as being any property that has a "1 year direct hydrological connectivity". It appears that this language is open to interpretation and could in fact eventually encompass any development in the Big Sky area that is not located within the geographic boundary of the Water and Sewer District. I fear that the wording creates an "illusion" that the EIS boundary map is the jurisdiction to which the ARM is to be applied, but I do not believe that this is correct. Adoption will potentially lead to much litigation and wasted funds by the state and property owners.
2. The current draft of the Environmental Impact Statement for the ORW shows the "ORW footprint" as encompassing all property that is located along Highway 191 and segments of the South Fork and West Fork rivers. In addition, if the ORW is adopted with the "hydrological connection" language referred to above, property that I own could be brought under the ORW jurisdiction and become

10/30/2006

unusable and worthless. This could essentially confiscate almost all of the development rights associated with my property. Since we have mortgages and development loans on these tracts of land, we would be unable to develop them and potentially default on these loans causing severe personal financial hardship as well as having a depressing impact on property values and tax revenues as result.

3. There are an estimated 10,000 jobs directly related to the economic activity in the Big Sky area in the construction, development and real estate industries. A large percentage of those jobs will be eliminated by an ORW designation. This economic hit would be devastating to the area and to the tax bases of Gallatin and Madison counties, and I question whether anyone has evaluated the "economic impact" adoption will have on the state and counties.

4. The EIS prepared by the Department of Environmental Quality contains many serious flaws that would have terrible effects to the Big Sky community. It appears that DEQ has "fast tracked" the EIS with a minimum amount of community involvement. Historically an EIS, especially one of this magnitude, will take a number of years to evaluate before being adopted. It is obvious that since the DEQ is doing the EIS itself versus some private company such as a mine operator, all of the usual procedural safeguards and time frames to provide meaningful input from the community are being discarded. It is essential that the DEQ slow the EIS adoption process down in order to give the community a chance to provide its input.

In reviewing the footprint of the zone of hydrologic connectivity (figure 2-1), it is not clear where the boundary falls on my land identified as Tract 1 on C.O.S 2409, and I am requesting a meeting to review the exact location of this boundary and clarify how the zone of hydrologic connectivity has been defined. I would appreciate a response and opportunity to me personally on this question.

Due to the fact that I was not in town for the October 25th hearing, I would like to request a series of public hearings and/or meetings on this issue so that I and other interested property owners can have multiple chances to attend in case of scheduling conflicts. This is too important an issue to have only one opportunity to present our concerns.

John Bauchman

1245 Odell School Rd.

Concord, NC 28027

704-795-2494

704-277-0200 mobile

Fax: 262-9344

johnb01@aol.com

Leanne Roulson

S, WA Fish

From: Mike and Stephanie Becker [beckfarm@hotmail.com]
Sent: Wednesday, October 25, 2006 4:37 PM
To: Hallsten, Greg
Subject: Comments on DEIS

So. Mont.
WA
Fish

Attn: Greg Hallsten
Department of Environmental Quality

Dear Mr. Hallsten,

We would like to officially register our comments on the Draft Environmental Impact Statement concerning the designation of the Gallatin River as "Outstanding Resource Water." For our 25 years plus in Gallatin Valley and now living in Madison County, we have treasured the gorgeous Gallatin River and trust that DEQ will protect this irreplaceable water resource for future generations by designating it ORW.

Riparian ecosystems are under seige throughout our state and the nation, as you well know. Parts of the Gallatin River are already losing populations of stone flies due to pollution. We cannot allow any further degradation. No future unregulated development without the strictest ORW water standards should be allowed. Since Big Sky Water and Sewer District currently has the best sewage treatment plant in Montana, no new structures within that sewer district would be restricted by the ORW designation. Protecting the Gallatin's outstanding water quality will only add 1% to 3% to the cost of a new home for alternative septic treatment built on land where the discharge from septic tanks would reach the river within one year. That is only reasonable for those choosing to build in the river region key to tourism of Southwest Montana and to innumerable recreationists and to the economy of the local community. Without the outstanding water of the Gallatin River, Southwest Montana would be a poorer, far less desirable destination for visitors who bring dollars to our region. Not to mention the pure aesthetic value of this priceless natural river. It must be given the highest protection possible by those charged with the preservation of our environment.

Sincerely,
Mike and Stephanie Becker
PO Box 268
Harrison, MT 59735

10/30/2006

WQ F

Leanne Roulson

From: JIM BELL [huntermnt@msn.com]
Sent: Thursday, October 26, 2006 1:03 PM
To: Hallsten, Greg
Subject: ORW Comment

Dear Sir,

I would like to submit a written comment to support a proposed amendment of ARM 17.30.617 to designate the Gallatin River from Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water. After reviewing the DEIS and attending the public hearing at the Gallatin Gateway on (10/26/06), I believe the ORW designation is needed to prevent water quality degradation in this river. I would also like to point out that once the water quality has been degraded it is very difficult and very costly to resolve the problem. It is far better to prevent the damage in the first place.

Sincerely, James Bell

6474 Jackson Creek Rd.
Bozeman Montana 59715
406-586-2137



Greater Yellowstone Coalition

P.O. Box 1874 • Bozeman, Montana 59771 • (406) 586-1593 • fax (406) 556-2839 • gyc@greateryellowstone.org

S, LU, WQ

October 25, 2006

Montana Department of Environmental Quality
Director's Office
P.O. Box 200901
Helena, MT 59620-0901
Attn: Greg Hallsten

RECEIVED

OCT 25 2006

DEQ
DIRECTOR'S OFFICE

Sociation

Dear Mr. Hallsten:

On behalf of the Greater Yellowstone Coalition, thank you for providing us with the opportunity to comment on the Draft Environmental Impact Statement for the Gallatin River Outstanding Resource Water Designation.

The Greater Yellowstone Coalition (GYC) is a non-profit conservation organization of more than 12,000 members from across Montana and around the country who are dedicated to protecting the lands, waters and wildlife of the Greater Yellowstone Ecosystem. Many of our members, board and staff recreate on or live along the section of the Gallatin River that is being considered for Outstanding Resource Water (ORW) designation.

The Greater Yellowstone Coalition has a long history of working to protect water quality in the Gallatin River. In 1999, we filed a lawsuit against the Montana Department of Environmental Quality (DEQ) for issuing the Big Sky Water and Sewer District (BSWSD) a permit to dump 15 million gallons per year of treated sewage into the Gallatin River. As a result of that lawsuit, the BSWSD agreed to spray its effluent on the golf course rather than discharging it into the Gallatin River.

The Greater Yellowstone Coalition strongly supports the Proposed Action – designating approximately 43.6 miles of the Gallatin River from the northern boundary of Yellowstone National Park to the confluence with Spanish Creek as an ORW. This designation will ensure that water quality in the Gallatin River is not permanently degraded by the point source discharge of pollutants such as phosphorus and nitrates that are present in treated wastewater. It will also ensure that the Gallatin River's robust and growing recreation-based economy will continue to flourish far into the future. As the DEIS states, fishing, rafting, kayaking, and other forms of river-based recreation along the Gallatin River contribute approximately \$9.5 million annually to Gallatin County's economy and add immeasurably to our quality of life.

People protecting our land, waters, and wildlife, the Greater Yellowstone Ecosystem, now and for future generations.

Idaho Falls Office • 162 North Woodruff • Idaho Falls, Idaho 83401 • (208) 522-7927 • fax (208) 522-1048

Cody Office • 1285 Sheridan Ave., Ste. 215 • Cody, Wyoming 82414 • (307) 527-6233 • fax (307) 527-6290

Jackson Office • P.O. Box 4857 • Jackson, Wyoming 83001 (307) 734-6004 • fax (307) 734-6019

www.greateryellowstone.org

The Greater Yellowstone Coalition believes that development can continue in the Big Sky area without permanently degrading water quality in the Gallatin River, provided that it is done carefully and responsibly. One would think that the major development interests in the Big Sky area would share this view. Virtually all of their marketing materials tout the Gallatin River's pristine water quality. According to page 177 of the DEIS, *water quality has been found to have an average effect of about 6 percent on housing prices*. Clearly, as demonstrated by the fact that the entire Lake Tahoe basin in California/Nevada is designated as an ORW, protecting water quality does not mean that development has to be brought to a standstill. It simply means development has to be done in such a way that it does not permanently and unnecessarily degrade important aquatic resources.

The Greater Yellowstone Coalition believes the DEIS probably overstates the impacts that an ORW designation would have on the development potential and overall economy of the Big Sky area. According to the DEIS, *without any mitigation*, the Proposed Action would lead to a 89 percent reduction in the number of residential dwelling units and a 99 percent reduction in the amount of commercial square footage that would be permitted in the ORW footprint. The actual number of new homes that would be allowed in the ORW footprint would decrease from 652 to 67, and the amount of new commercial space that would be allowed would decrease from 419,000 sq. feet to 2,645 sq. feet. We would like to know more about how DEQ arrived at these figures. In particular, we would like to know whether the DEQ included homes and commercial space located within the boundaries of the Big Sky Water and Sewer District in its analysis. If it did, we believe that would skew its findings, as any residential homes and commercial businesses located within the BSWSD could hook up to the existing wastewater treatment system and would not discharge additional phosphorus and nitrates into the Gallatin River.

With mitigation in the form of alternative wastewater treatment systems and other available tools (e.g. water quality trading or building centralized wastewater treatment systems outside the ORW footprint), the DEIS acknowledges that ORW designation would have negligible impacts on future development within the footprint. The DEIS states that installing alternative wastewater treatment systems would add anywhere from 1-8 percent to the price of an average home in the ORW footprint, or \$3,200 to \$20,000 per home. The exact cost impact would depend on the type of alternative wastewater treatment system that is installed. *Assuming there are 652 developable residential units left within the ORW footprint, the total cost of mitigation would range from \$1.8 to \$11.5 million. To put this into some perspective, many individual homes in the Big Sky area currently sell for \$5-10 million.*

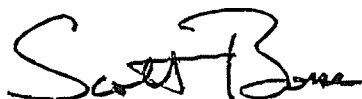
The DEIS uses several different numbers in estimating the cost of mitigation on new home prices. On page E-4, it cites a cost increase of less than 1 percent. On page E-14, it says 1-8 percent. On page 98, it says 1-3 percent. We would like to know which range is correct. The DEIS bases all of these figures on a median existing home price of \$250,000. That number seems far too low for the Big Sky housing market. Assuming the actual median home price is considerably higher, the cost impact of installing alternative wastewater treatment systems should be much lower on a percentage basis.

Even if one were to assume that mitigation measures would add 1-8 percent to the price of a new home in the ORW footprint, that increase needs to be weighed against the 6 percent positive impact that existing water quality in the Gallatin River may have on existing home prices.

On balance, GYC believes the DEIS contains a lot of useful information regarding the potential impacts that an ORW designation might have on future development within the ORW footprint. However, we believe the DEIS should have gone two steps further by assessing the potential impacts of an ORW designation on the greater Big Sky area (outside of the ORW footprint) and on Gallatin County as a whole. The fact is, the vast majority of the development potential in the Big Sky area lies outside and adjacent to the ORW footprint. Therefore, any adverse economic impacts that an ORW designation might have inside the footprint would be diluted by the much larger scale development activity that would be allowed to proceed adjacent to it. If anything, ORW designation would probably have a slight positive economic impact on adjacent areas by preserving one of the area's most prized economic assets and marketing tools – the Gallatin River. The same argument can be applied to Gallatin County as a whole. The Gallatin River does not just benefit the greater Big Sky area. It is also a major draw for people who own homes and businesses in the Gallatin Valley, and for people and businesses that are considering re-locating here. The bottom line is this: *If DEQ had assessed the potential impacts that an ORW designation might have on the economy of Gallatin County as a whole, the net impacts would be negligible or positive, even without any mitigation measures.*

In conclusion, GYC strongly supports the Proposed Action – designating the Gallatin River from the northern boundary of Yellowstone National Park to the confluence of Spanish Creek as an Outstanding Resource Water. Thank you for providing us this opportunity to comment.

Sincerely,



Scott Bosse
Rivers Conservation Coordinator

S

Leanne Roulson

From: Samantha Breeden [sambreeden@hotmail.com]
Sent: Friday, October 27, 2006 10:16 AM
To: Hallsten, Greg
Subject: Gallatin ORW designation opinion

Sous ean
+ wte

Good Morning,

I fully support designating the Gallatin River an Outstanding Resource Water. While I am a real estate agent in the Big Sky area, I just don't believe the hype that protecting water quality means cutting jobs. Basically, I feel that if people want to enjoy what the area has to offer, then they are responsible for protecting it for years to come.

Regards,
Samantha Breeden
406-579-6011

Get today's hot entertainment gossip
<http://movies.msn.com/movies/hotgossip?icid=T002MSN03A07001>

Hallsten, Greg

From: Roger & Noreen Breeding [breeding@imt.net]
Sent: Wednesday, October 04, 2006 11:27 AM
To: Hallsten, Greg
Subject: Comments on ORW status EIS for Gallatin River

Some comment

Greg Hallsten:

Alternative 2 (granting ORW status) is the only reasonable choice. Alternative 1 (no action) will lead to degradation of water quality and activities associated with the river, such as fishing, boating, and irrigation, and decreased property values. Alternative 3 (existing regulatory authority) has failed to protect the river so far.

If new development used newer, cleaner sewer systems currently on the market, there would be scarcely any drawbacks to Alternative 2, including financial ones. The benefits are many --- ensuring the continued health of the river and fishing, boating, and irrigation using its waters, plus enhanced property values. Development in Gallatin County is becoming so dense that the cleaner sewer systems will probably soon be required in any case.

Thank you for producing the EIS and accepting public comments on it.

Noreen Breeding
1970 Star Ridge Rd., Bozeman, MT 59715

WQ

Clinton/Judith Cain
2551 Magenta Rd.
Bozeman, Mt. 59718
Sept. 13, 2006

Montana DEQ: Greg Hallsten
1520 East 6th Ave.
Helena, Montana 59620

We are sending comment on the draft EIS of the ORW for the upper part of the West Gallatin River. Your review is very informative and you have compiled a wonderful impartial study.

We want to thank you for sending this draft to us as we have serious problems with development that threatens Impact to our rental wells. Our properties are next to where developers have placed an effluent drain field, 16 Acres which they plan to excrete 600,000 to 800,000 gal. of effluent daily when developed completely and they are asking for more subdivisions. Common sense tells, along with what septic remain plus this much effluent is overloading the ground. Though I know and cannot prove, short of digging thru this ground, which I have done in the past, that the alluvial gravels drain toward the river.

We want to send kudos' for this draft and wish the ORW to be approved by the Legislature. Only wish the study could have gone farther than Spanish Creek. Impacts to water quality!

Thanks again for the draft,
Appriciate it,

Judith Cain
Clinton A Cain

WQ

Leanne Roulson

From: Matt Clifford [matt@clarkfork.org]
Sent: Friday, October 27, 2006 4:46 PM
To: Hallsten, Greg
Subject: Gallatin ONRW petition

Attachments: CFC Gallatin ONRW comments.doc; ATT132748.htm



CFC Gallatin ATT132748.htm
RW comments.doc (1 KB)

Greg:

Attached are the Clark Fork Coalition's comments on the Gallatin ONRW petition.

Thanks,
?
Matt Clifford
Conservation Director/ Staff Attorney
Clark Fork Coalition
PO Box 7593
Missoula, MT 59807
(406) 542-0539

October 27, 2006

Montana Board of Environmental Review
P.O. Box 200901
Helena, MT 59620

Re: Comments, Gallatin ONRW Petition

Members of the Board:

Following are the Clark Fork Coalition's comments on the Environmental Impact Statement for the petition to designate a portion of the Gallatin River as an Outstanding Natural Resource Water (ONRW) pursuant to Mont. Code Ann. § 75-5-316. The Coalition is a non-profit conservation group of 1,200 members that are dedicated to protecting and improving ecosystem and community health in the Clark Fork River basin. In particular, we have been working to control nutrient pollution in the Clark Fork basin since our inception 20 years ago, both on our own and in conjunction with our partners in state and local government, the regulated community, the environmental community, and the public at large.

I will begin by briefly describing the Clark Fork Coalitions interest in the Gallatin ONRW EIS. While the Gallatin River is outside our watershed and our traditional geographic area of interest, this EIS raises interesting issues and approaches that have direct relevance to the Clark Fork basin, and indeed most or all of the major river basins in western Montana. Like the Gallatin, one of the main threats the Clark Fork faces is long-term water quality degradation from nitrogen and phosphorous. Also like the Gallatin, much of this threat comes from residential wastewater, both from collective wastewater plants and from individual septic systems, which are spreading across the watershed at a rapid rate due to residential development. Unlike the Gallatin, the Clark Fork has already suffered water quality degradation to the point that it is listed as impaired by both nitrogen and phosphorous pollution. From a regulatory perspective, this puts the Clark Fork in a situation very similar to the one the Gallatin would be in if it is designated an ONRW – that is, there can be no allowable increase in nutrient pollution. Thus, we are very interested in the potential approaches the state could take to controlling additional sources of nutrient pollution, and particularly the cumulative load from sources such as septic systems that receive little scrutiny under existing surface water nondegradation procedures.

In this regard, we find the cumulative impacts approach spelled out in Alternatives 2 and 3 of the EIS to be very promising. As we understand it, the Department has calculated the maximum incremental increase in load that could be discharged to the river before reaching the WQB-7 trigger values for nutrients at a downstream compliance point representing the lower end of the

ONRW reach of the Gallatin. The state has also defined the “footprint” area where it believes groundwater aquifers directly discharge to the river or tributaries. The department proposes to cap the total allowable increase in cumulative load from all sources discharging into the river system – including the tributary aquifers within the “footprint” – at this level. Once this load increase was reached, any new discharge would either not be allowed (Alternative 2), or subject to a statutory nondegradation review under Mont. Code Ann. 75-5-303 (Alternative 3). A variety of measures would be available to help new sources stay within the cap, including Level II treatment, land application, and zero-discharge systems.

The Department’s proposed approach seems an excellent way to deal with the cumulative impact of residential wastewater systems that discharge to hydrologically connected groundwater. We have two general comments on this approach. First, we wonder whether the extent of the identified “footprint” area is sufficiently conservative (i.e., protective of water quality). While it is not clear from the EIS just how the extent of the footprint was determined, as a general rule it has been observed that virtually *all* unconfined aquifers in the intermontane basins of the northern Rockies tend to be connected in some way to surface water. *See* “Septic System Impacts on Surface Waters, A Review for the Inland Northwest” (Tri-State Water Quality Council 2005). We urge the Department to consider whether the mapped footprint is sufficiently large, or whether it would be more appropriate to conservatively assume that all groundwater in the basin is hydrologically connected to surface water, and that all discharges to groundwater be considered part of the cumulative load to the river.

Second, we agree that the Department has the authority to implement Alternative 3 as a matter of policy, without the need for additional action by the legislature or Board of Environmental Review. We hope the Department will implement this policy on the Gallatin if the Board and legislature do not designate the river as an ONRW. More broadly, we hope the Department will apply this policy on other rivers throughout western Montana to prevent degradation by the cumulative impacts of residential wastewater systems. There are a number of rivers that are threatened by increasing development, including some such as the Clark Fork that are already impaired. Applying existing non-degradation policy to prevent degradation by cumulative load from septic systems would be an important step forward in protecting these waters from what is perhaps the single largest threat to their quality.

On the specific merits of the ONRW petition, we believe the Gallatin meets the criteria for ONRW protection and urge the Board to designate it as such. The Gallatin is one of the most scenic and pristine of Montana’s major rivers, and supports a world-class coldwater trout fishery. It is also the basis for a multi-million-dollar recreational and tourist economy, and for a quality of life that supports the general economy of the Bozeman/Belgrade/Big Sky region.

Giving these waters the highest level of protection from degradation is the right thing to do, both environmentally and economically.

Thank you for considering the above comments. We look forward to working with the Board and the Department on these issues on the Gallatin and elsewhere in the state.

Sincerely,

Matt Clifford
Conservation Director/ Staff Attorney

**SPANISH PEAKS HOLDINGS, LLC
BIG SKY, MONTANA 59716**

S, L, WQ
Policy S

October 26, 2006

Montana Department of Environmental Quality
Director's Office
Attn: Greg Hallsten
Metcalf Building, 1st Floor
PO Box 200901
Helena, MT 59620-0901

Via Fax # (406) 444-4386

RE: Draft EIS for the Gallatin River OWR Determination

Dear Sirs,

I recently read through the 398 page Draft EIS for the above referenced matter. I offer this letter for the record on the requested public comments regarding this important matter to the public and the citizens of Montana.

Spanish Peaks Holdings, LLC is a large land owner in the area. These land holdings are either directly impacted by the proposed OWR designation, or indirectly impacted by the adjacency to lands covered by the designation.

I also personally own a home in the Big Sky area covered in the Draft EIS. I have been an active member of the local community since 1995. I was drawn to Montana by the outstanding natural beauty of the area, the fishing, wildlife and recreational aspects of southwestern Montana. I treasure the beauty of this land and have a strong commitment to maintaining the natural resources for future generations. I write as one of those beneficiaries of environmental protection outlined in the report.

The Draft EIS attempts to make a case that the waters of the Gallatin River are currently threatened by clearly identified impacts that will forever degrade the waters, resulting in the taking of extraordinary measures as outlined in the OWR designation. I submit the entirety of the Draft EIS document, *prima facie*, fails to make a case for such a designation.

**SPANISH PEAKS HOLDINGS, LLC
BIG SKY, MONTANA 59716**

Quoting from the text of the Draft EIS;

To begin the ORW designation process for a waterbody in Montana, a person or organization must submit a petition to the Board. The petition must present information supporting ORW designation. The Board may only classify a waterbody as an ORW if it accepts a petition and finds that:

- 1) the waterbody identified in the petition constitutes an ORW based on specific criteria;*
- 2) the classification is necessary to protect the ORW; and*
- 3) there is no other effective process available that would achieve the necessary protection.*

I submit the document makes a clear case that the No Action Alternative provides an effective process to achieve the necessary protection. There are presently in place regulatory and administrative processes and procedures that address the protection of water quality related to areas around the Gallatin River and its tributaries. The political subdivision of Gallatin County has a effective planning and zoning process already in place (see pages 68-75 for description), the State of Montana, under the Department of Environmental Quality, has a clear and effective process for sewer and septic permitting, and the US Environmental Protection Agency has clearly been exercising its authority and jurisdiction in the State of Montana over waters of the US, which the Gallatin River clearly is.

Further, the Draft EIS states;

The Board considers the following criteria in determining whether petitioned state waters are ORWs (75-5-316(4), MCA):

- (a) whether the waters have been designated as wild and scenic;*
- (b) the presence of endangered or threatened species in the water;*
- (c) the presence of an outstanding recreational fishery in the water;*
- (d) whether the waters provide the only source of suitable water for a municipality or industry;*
- (e) whether the waters provide the only source of suitable water for domestic water supply; and*
- (f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection.*

I submit the Draft EIS fails to address and offer support for a determination on items (a), (b), (d), (e), and (f) as outlined in the document.

The total land area within the scope of the proposed OWR designation is 530,800 acres. The report clearly states that 85% of this land mass is presently owned by the Federal government or are state lands, which are subject to existing regulations on water quality and limited land use. Both the state and federal governments may alter those regulations over their land holdings to decrease water quality impacts before imposing such a PAGE

**SPANISH PEAKS HOLDINGS, LLC
BIG SKY, MONTANA 59716**

restrictive provision on private land holding representing less than 15% of the land mass in the name of water quality from a non specified, hypothetical threat.

The report identifies two point discharge permits that exist in the proposed OWR area. It identifies one as being held by the Big Sky Sewer and Water District (BSSWD). I do not find in the document a reference to the other permit. In April of 2000, I signed a landmark agreement between the BSSWD and private land owners to allow for the handling of treated effluent on our private lands, the clear purpose of which was to never have the need for such a discharge permit to exist. Effluent discharge directly into the Gallatin River system was seen as a completely unacceptable situation. This extraordinary public and private partnership was done to protect the Gallatin and to allow for increased capacity on the BSSWD public sewerage treatment facilities to reduce the impact on soils and river water. Millions of dollars of private money and public bond issuances occurred to complete this complex agreement. Yet a driving force for this OWR proposal appears to be the continued existence of these MPDES discharge permits. This matter should be addressed in lieu of an OWR designation.

The economic impact tables as outlined in numerous places in the report are completely facetious and false. Any person who has stood at the intersection of Highway 191 and the Big Sky Spur Road knows empirically there are more than 274 workers involved in construction in the Big Sky CPD (page 180 of the report). I submit the number is understated by a factor of more than 10X. In addition to the direct wage impact, the materials purchased in the home construction trades are generally considered to be 40% to 60% of the total costs of the finished product. The multiplier effect of the expenditures on the local southwestern Montana economy has to be measured in the hundred of millions of dollars annually. The secondary state and local tax effects are also significant and measure in the hundreds of millions of dollars. The economic impact of the jobs in local economy is enormous and is completely misstated in the Draft OWR report. Any economic analysis of the trade off between recreational fishing revenues and local construction related revenues sadly will not come down on the side of the fish. But as stated earlier, the OWR and its effective ban on residential and commercial construction is not the only possible means to protect the fisheries habitat. Hence it fails the test outlined in legislation.

The Report states;

More development within the study area would also increase soil disturbance. There would thus be a greater likelihood that erosion of disturbed soils could degrade water quality. There would also be a greater likelihood for additional disturbance of wetlands and riparian habitat under this alternative, from both direct impacts (see Section 4.8) and secondary impacts, as a result of increased sedimentation. (page 135)

**SPANISH PEAKS HOLDINGS, LLC
BIG SKY, MONTANA 59716**

Clearly, the existing Federal and State regulations on wetlands management are being enforced in the area covered by the OWR. Conversation best management practices, or BMP's, and soil run off and sediment control procedures have been enhanced and complied with in all areas covered by the proposal. To ban almost all development and construction in the area is an extreme step to mitigate something that effective procedures are already in place to manage.

The report is patently biased in its conclusions. In Section 4.3.1, on Water and Hydrology, the report works thru a complex example of possible nitrate and phosphorus contamination of the river water. Quoting from the report;

The analysis does not account for attenuation of nitrate or phosphorus in soils or groundwater and assumes 100% of the effluent loads discharged from the subsurface wastewater treatment systems would reach the Gallatin River,

Suggesting hat 100% of a subsurface effluent discharge will seep its way through the complex soils of this part of Montana and directly enter the river is similar to yelling "fire" in the crowded theater. It is incendiary in its purpose.

In summary, I want to see our land and water protected for future generations. As a homeowner, I derive benefit from those protections. As a land developer, I also want to see the resources protected for future generations. And I derive economic benefits from the high quality water and land resources in southwestern Montana.

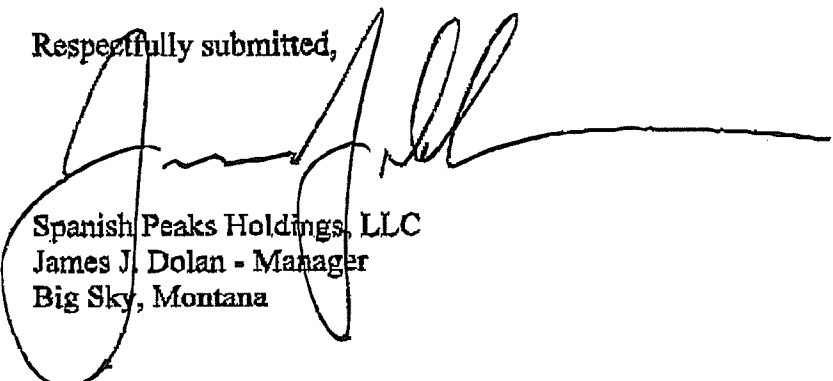
I do not see the OWR as justified based on my reading of the Draft EIS.

I do not see it justified based on my knowledge of the local environmental situation.

I do not believe the public has been fully and fairly informed about the negative social and economics impacts such a designation will have on our communities.

I am not in support of an OWR determination for the Gallatin River, based on the above.

Respectfully submitted,



Spanish Peaks Holdings, LLC
James J. Dolan - Manager
Big Sky, Montana

WQ, S

Leanne Roulson

From: Robert DuBose [duboses@mcn.net]
Sent: Thursday, October 26, 2006 4:02 PM
To: Hallsten, Greg
Subject: Gallatin ORW Comment

Greg Hallsten
Montana Department of Environmental Quality

Dear Mr. Hallsten:

This message is to state my strong support for designating the Gallatin River an ORW, and to comment on the EIS as it affects any recommendation to make such a designation. Failure to ASAP make this designation will permit the continued creeping degradation of this resource, ultimately negating its economic as well as aesthetic benefit to those who live, work, and play on or near it.

First, the Gallatin River, especially from its headwaters to the mouth of Spanish Creek, is a huge economic engine for Gallatin County and Montana. Its recreational use directly provides jobs for numerous Montanans. In addition, the basis for the low estimates of economic impact resulting from degradation is highly suspect, likely greatly understating the economic loss of continued degradation. It's a vital leg in the Gallatin-Madison-Yellowstone River trifecta, a Blue Ribbon destination that is a lifelong dream of fisherpersons around the world. The Gallatin serves as a magnet, for these well-to-do recreationists.

For businesspersons, it is the economic base and attractiveness of our natural resources which drives our ever-expanding real-estate development industry, not the other way around. It is astoundingly shortsighted to claim that economic harm to developers or property sellers would result from protecting the resource which creates the demand for real estate development in the first place. Even at the EXTREMELY high-end estimate of another 3% added to the cost of development, it's a bargain, not only for developers but for current residents and land owners, protecting and increasing property values. For evidence, consider the real-estate ads which tout the value of adjacent protected environmental amenities ("backs up to Forest Service land," "close to fishing," etc.).

Aside from the economic benefits to developers, land owners, and irrigators, there is the "natural beauty" dividend. I am not willing to accept a spiralling decay of my back yard in order to save high end homebuyers a couple of percentage points. Closing costs fluctuate more than that annually! Personally, I'd prefer paying a tax (though not a subsidy to the development industry) to insure that we retain the soul-healing benefits of knowing this crystal clear, drop-dead-gorgeous, ecologically rich river will still be so decades from now.

For those opposed to ORW designation as a matter of property rights principle, please consider: It is no more a valid property right to pollute the groundwater in YOUR back yard which then flows into MY back yard than it is a free-speech right to punch someone in the nose to express your

disagreement with their political position. Further, ORW designation will protect and increase, not decrease, property values in the watershed.

Bob DuBose
5020 Justin Lane
Bozeman, MT 59715 USA
Voice: (406) 585-1232
Cell: (406) 570-5774
Fax: (928) 447-5569

5

Hallsten, Greg

From: rad_7@canoemail.com
Sent: Tuesday, October 17, 2006 4:05 PM
To: Hallsten, Greg
Subject: Protect the Gallatin!

Soweeen t

I am writing to support designating the Gallatin River as an "Outstanding Resource Water." Please make my comments part of the public record.

- Protecting the Gallatin's outstanding water quality will only add 1-3% to the cost of a new home (for alternative septic treatment) built on land where the discharge from septic tanks would reach the River within one year.
- The Gallatin is an important part of the quality of life that draws so many people to live and visit southwest Montana.
- The Gallatin is one of the most heavily fished and frequently floated rivers in southwest Montana, providing numerous jobs and an economic player in the local community.

Please protect our precious resources here in Montana.

Sincerely
Rebecca Durham

Sign up today for your Free E-mail at: <http://www.canoe.ca/CanoeMail>

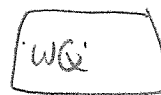


Gallatin Local Water Quality District

311 W. Main, Room 311, Courthouse • Bozeman, Montana 59715

(406) 582-3148 • (406) 582-3145 • Fax (406) 582-3095

www.co.gallatin.mt.us/GLWQD



RECEIVED

October 26, 2006

WQ

OCT 27 2006

Montana Department of Environmental Quality
Board of Environmental Review
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

DEQ
DIRECTOR'S OFFICE

Subject: Comments on Gallatin River ORW Draft EIS

Dear Board Members:

A portion of the Gallatin River that is being considered for ORW designation lies within the boundary of the Gallatin Local Water Quality District (District). For reference a map showing the boundary of the District within Gallatin County is provided as attachment A. The Draft EIS does not appear to recognize the presence of the District, or address potential impacts of the ORW designation to the District.

The Board of Directors of the Gallatin Local Water Quality is aware of the proposed designation, but has not taken a position on the issue. However, in general it would appear that the designation would aid the District in its mission to protect and improve the quality of both surface water and ground water with the District.

Please consider the District in the final EIS. If you have any questions or would like additional information about the Gallatin Local Water Quality District, please call me at 582-3148 or email me at alan.english@gallatin.mt.gov.

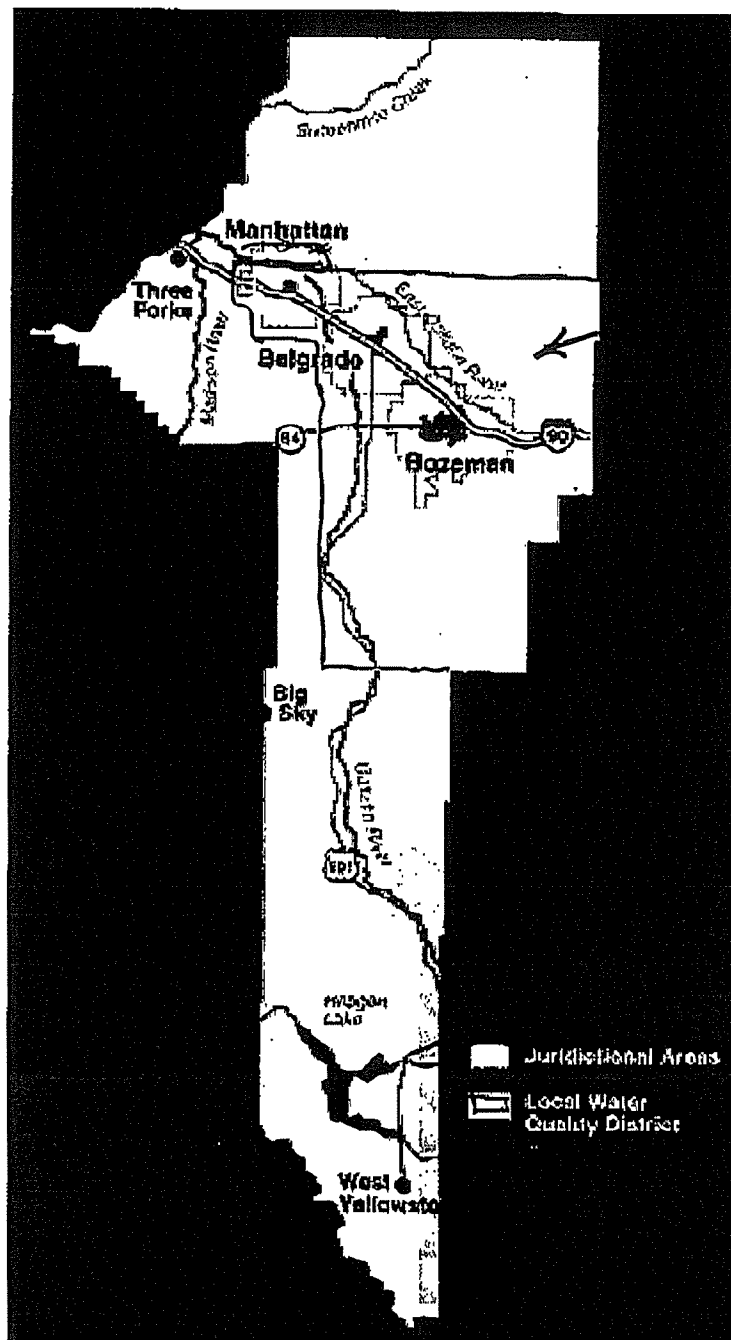
Sincerely,

Alan English
Manager

Attachment: Map of Gallatin County and the Gallatin Local Water Quality District

cc: Gallatin Local Water Quality District Board of Directors

ATTACHMENT A



The Gallatin Local Water Quality District is shown shaded in white. It covers the middle third of Gallatin County and includes the City of Bozeman, City of Belgrade, and the Town of Manhattan.

GOETZ, GALLIK & BALDWIN P.C.

ATTORNEYS AT LAW

35 NORTH GRAND 59715

P.O. BOX 6580

BOZEMAN, MONTANA 59771-6580

PH. (406) 587-0618 FAX (406) 587-5144

JAMES H. GOETZ
BRIAN K. GALLIK
ROBERT K. BALDWIN
J. DEVLAN GEDDES
KATHERINE A. BAKER
TRENT M. GARDNER

Legal
S, WQ, LU?

EMAIL:
goetzlawfirm@goetzlawfirm.com

WEBSITE:
www.goetzlawfirm.com

October 24, 2006

CERTIFIED MAIL/RETURN RECEIPT REQUESTED (& FAX)

Montana Department of Environmental Quality
Metcalf Building
First Floor
P.O. Box 200901
Helena, MT 59620-0901
ATTN: DIRECTOR'S OFFICE

RECEIVED

OCT 24 2006

DEQ
DIRECTOR'S OFFICE

*Re: The Draft Environmental Impact Statement For
The Gallatin River Outstanding Water Designation*

Dear DEQ:

This firm represents Westland Enterprises, Inc., and Simkins Holdings, LLC. Westland is a long-time owner of real property in the Big Sky area. Simkins Holdings, in turn, is a development company that develops real property in the Big Sky area. Both entities are significantly impacted by the draft *Environmental Impact Statement* ("EIS") for the Proposed Gallatin River Outstanding Resource Water Designation ("ORW"), as well as the proposed changes to the Administrative Rules of Montana concerning this matter.

Westland and Simkins have asked this firm to offer comments upon the adequacy and accuracy of the draft EIS, and are intended to put the Montana Department of Environmental Quality ("DEQ"), the Board of Environmental Review, and the Legislature on notice that the draft EIS is woefully deficient, inaccurate, and the process involved in the creation of the draft *Environmental Impact Statement*—which undoubtedly will be adopted in its present form by the DEQ—and the amended rules, as proposed, effectively constitute "a taking" and the "process" employed by the DEQ to hurry this matter through with little public

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input or comment denies my clients their rights to due process of law. This Petition and the preferred alternative, if adopted, will result in litigation.

I. INTRODUCTION.

It is important for this agency to understand that Westland and Simkins, and other affected landowners, recognize the value of a clean environment, including the value of the Gallatin River as a recreational resource. Indeed, it is the environment that makes their property valuable, and the community thrive as an economic engine in Gallatin and Madison Counties. As further discussed below, the landowners and residents of Big Sky and the Gallatin Canyon, including my clients, have taken positive steps -- long before the Petition for the ORW designation -- to ensure that the water in the Gallatin River remains clean and that development in the Big Sky/Gallatin Canyon take place in a manner consistent with an approved growth policy, and state environmental and water quality laws.

For instance, the Big Sky Community voted to tax itself to fund the wastewater storage and discharge agreement with the Yellowstone Club to prevent discharge into the Gallatin River, and create a state-of-the-art SBR wastewater treatment facility. Moreover, the community created and continues to support the fund of the Blue Ribbon Task Force to monitor constantly the well-being of the Gallatin River.

In short, there is no need for the proposed, preferred alternative, which effectively appears to be a conclusion in search of a process.

II. The ORW Footprint is Arbitrary and Capricious.

The ORW EIS sets forth a footprint that purports to limit the reach of the effects of the ORW. Interestingly, the reach of the footprint falls short of large and expensive developments in Madison and Gallatin Counties, including the Yellowstone Club, Spanish Peaks, and others. At the same time, proposed amendments to ARM 17.30.617, which would prohibit any discharges to groundwater with a direct hydraulic connection to an ORW, are within the statutory mandate of prohibiting any permanent change to the existing water

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quality of an ORW. It is, thus, disingenuous of the DEQ to, on the one hand, purport to limit the footprint of the ORW designation, and then, on the other hand, propose regulations under ARM 17.30.617 that effectively reach far beyond the effect of the current footprint.

There is no question the DEQ understands and fully appreciates the interaction between the draft EIS footprint, and the proposed changes to the Administrative Regulations. The actions of the department can only be described as knowingly misleading. Accordingly, the draft EIS designation and footprint are arbitrary and capricious. It is, therefore, unlawful.

III. ADOPTING THE PREFERRED ALTERNATIVE-WHICH WILL HAPPEN- WILL EFFECTIVELY STOP ALL MEANINGFUL FUTURE DEVELOPMENT IN THE "FOOTPRINT" AREA, CONSTITUTING A TAKING IN VIOLATION OF THE UNITED STATES AND MONTANA CONSTITUTIONS.

The Supreme Court's analysis of takings under the United States Constitution has evolved over time, granting more protection to landowners, and placing greater emphasis on government accountability for its regulatory actions. In *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), the Court identified the following factors to consider in determining if a regulatory taking has occurred:

The economic impact of the regulation on the claimant and , particularly, the extent to which the regulation has interfered with distinct investment-back expectations are, of course, relevant considerations. So, too, is the character of the governmental action. A "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

Id. at 124 (citations omitted).

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In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 159, 67 L.Ed. 322 (1922), the Court opined that “[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.” Situations in which an ordinance prohibits the “most beneficial use of the property” but allows other uses do not rise to the level of a taking. *Penn Central*, 438 U.S. at 127. “In deciding whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole.” *Id.* at 130-31.

In *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003 (1992), the Supreme Court held that compensable regulatory takings occur when government action denies all economically beneficial use of property, unless the government is preventing a nuisance, meaning the use of land for what is expressly prohibited, or preventing a harmful or noxious use. However, preventing a harmful or noxious use (a nuisance) cannot be justified simply by referring to legislative findings, but must be supported by objective evidence in a “total taking inquiry.” If less than a total wipe out is the result, an economic impact/governmental purpose analysis of prior court cases must be used to determine a taking. The ultimate consideration is “whether the interference with appellants’ property is of such a magnitude that there must be an exercise of eminent domain and compensation to sustain it.” *Id.* at 136 (citing *Pennsylvania Coal Co. v. Mahon*, 260 U.S. at 413).

In *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the United States Supreme Court saw “no reason why the takings clause of the Fifth Amendment, as much as a part of the Bill of Rights as the First Amendment, or the Fourth Amendment, should be relegated to the status of a poor relation.” In *Dolan*, the Court held that a taking occurs when there is “no rough proportionality” between an exaction imposed by government and the projected impact of a proposed development. The rough proportionality test, thus, requires greater scrutiny than a rational basis test of due process or equal protection analysis, and the government must make an individualized determination that requires dedication of land be related both in nature and extent of the proposed development’s impact.

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In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 119 S.Ct. 1624 (1999), the United States Supreme Court held that whether a landowner has been deprived of "all economically viable use" of property is predominantly a factual question, and, thus, a question that is reserved for a jury. On the other hand, whether a land-use decision substantially advances legitimate public interest in a regulatory takings context is a mixed question of law and fact. The essence of the case requires government agencies, planners and regulators (such as yourselves) to act fairly and honestly. If development is not wanted in an area, or if development is desired to stop in an area, as this Petition abundantly makes clear, it is the duty of the Department of Environmental Quality to say so up front, and not after "considering" and rejecting other possible alternatives. If property is coveted for public use, then the DEQ, the State of Montana, or the Petitioner should purchase that property, not regulate the property to death. These are simple precepts. However, this Petition and the process by which this Petition has been proposed, with a preferred alternative that will undoubtedly be adopted by the Department and proposed to the legislature, runs rough shod over the rights of the individuals who own property in the area, including my clients, and effectively will stop all development in the area—the intended consequence of the ORW Petition, and the preferred alternative.

In sum, while there is no such formula for determination of "a taking" unless there is a total wipe out. In making an analysis of whether there is a regulatory taking, the Court will look at the economic impact on the owner, interference with investment-backed expectations, and the character of the government action.

The regulatory and takings impact of the proposed legislation is most evident at pages 170 and 171 of the EIS. There, under Gallatin Canyon/Big Sky Zoning District Designation Residential Single-Family 7,500, a total of 226 possible dwelling units exist without the ORW Petition. However, once this Petition, if accepted, is imposed, that drops to one or, at most, three dwelling units. This is a *significant* takings and restriction in the possible use of people's property. Similarly, with respect to community commercial, existing law would allow 91,100 square feet of development. However, with the Petition, that number is significantly reduced to, at most, 1,011. With respect to commercial and

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industrial mixed-use, 270,000 square feet of development presently exists, and that would be reduced to 5,351 square feet.

The environmental impact statement, as proposed, makes clear that the owners of property in the Gallatin Canyon/Big Sky area who are not on the Big Sky Water & Sewer District's sewer system, will be denied essentially all reasonable value of their property, as well as their investment-backed expectations substantially destroyed. This is made most clear by your own analysis at pages 170 and 171.

In short, the figures speak for themselves. The proposed EIS, if adopted, will result in takings of real property, for which my clients will seek compensation.

IV. THE ENVIRONMENTAL IMPACT STATEMENT IS BASED UPON FAULTY AND INACCURATE INFORMATION.

Another critical flaw in the ORW analysis and the proposed alternative is the socio-economic analysis. It disingenuously states (at p. 179) that the ORW designation would "protect the existing property value differential associated with water quality." It further states that "any limitations on build-out would limit the increase and supply on new dwelling units, and with a given increase of demand, increase prices for existing and new units well above what they otherwise would be under the no action alternative." This, in fact, is an understatement. It also significantly impacts the efforts by Gallatin County and others to provide for affordable housing in the Gallatin Canyon/Big Sky area, for which little consideration is made in this analysis.

The analysis, with respect to the number of jobs that would be lost or severely curtailed as a result of the ORW designation is also flawed. At the present time, the Gallatin Canyon/Big Sky area is a thriving engine of economic development in the Gallatin Canyon, Big Sky and Madison County areas. The number of people employed in the area as a result of construction of new homes and supporting the recreation industry far exceed that which is set forth in the Environmental Impact Statement.

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My clients, long-time landowners in the Big Sky area, have personal knowledge of the number of individuals employed by the construction and development industry in the area at issue. The proposed EIS will have a devastating effect on the employment opportunities in the area – which in turn will have a ripple effect through Gallatin and Madison Counties.

For example, a draft comprehensive study being conducted by the State of Montana's Department of Commerce (a sister agency of the DEQ) shows that an estimated 10,000 jobs are created by all of the economic activity in the Big Sky area. A substantial number of those jobs that are associated with the construction, development and real estate industries will be destroyed or significantly impaired by the ORW designation and the preferred alternative. The figures in the draft EIS, at page 180, showing that only 274 jobs are generated by these industries by Big Sky is absurd on its face and is therefore arbitrary and capricious. At the very least, the EIS should not go forward without first waiting for the final draft report of the Department of Commerce concerning the Big Sky economic study, once it is completed.

Another enormous flaw in the socio-economic analysis is the assertion on page 183 that the cost of mitigation for the advanced centralized wastewater system is only \$3,500.00 per single family equivalent ("SFE"). This number represents a total misunderstanding or misrepresentation of the finances of the Big Sky Water and Sewer District in which the \$3,500.00 impact fee charged by the District is only one of its many funding sources. Also, the District is able to obtain a much lower cost per SFE of wastewater treatment than any smaller landowner or developer due to the economies of scale it can create through its large size and capacity.

Again, your analysis ignores, minimizes and/or seriously distorts this impact, as it seeks to justify its pre-ordained preferred alternative.

V. EFFECT ON THE BIG SKY COMMUNITY PLAN.

Another analysis that is missing in this Environmental Impact Statement is the existence of the Big Sky Community Plan. This regulation and plan (i.e.,

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Growth Policy) was adopted by the residents of Gallatin County, with respect to the Big Sky area. This carefully laid-out plan included areas for residential, commercial, community facilities, community commercial, and light industrial activities. The purposes of the regulation include, among other things, to:

- ▶ Preserve the scenic beauty and natural environment of the district (which includes the Gallatin River);
- ▶ Protect scenic qualities, fresh air, groundwater, and service water.
- ▶ Promote the preservation of wildlife and fish habitat;
- ▶ Facilitate the adequate provision of water;
- ▶ Ensure that the built environment enhances the natural environment;
- ▶ Preserve and protect property values;
- ▶ Encourage development of affordable housing; and other laudable purposes.

The EIS and proposed preferred alternative does not give any consideration, let alone lip service, to the Gallatin Canyon/Big Sky plan, land-use map, capital improvements policy, and zoning regulations carefully crafted by the landowners and residents of the area and adopted and enforced by their duly elected representatives. These regulations allocate residential, commercial, and other zoning designations that allow for the existence of a viable community. The preferred alternative, if adopted, effectively wipes out any future commercial and light industrial development, which in turn adversely affects the community and will place an added burden on the already heavily traveled U.S. Highway 191. It is noteworthy that the Community Plan prohibits any heavy industrial use in order to protect the environmental integrity of the area.

This later issue – U.S. 191 – is also absent from the analysis employed by your agency. Stated simply, the EIS does not reflect the impact of the preferred

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alternative on the US 191 and the likely increase in commercial activity that will result when the ability to develop commercially zoned property is severely limited.

In short, the proposed EIS is a result-oriented conclusion looking for a process and a justification. It has ignored the existing land use in the area, the vested property rights of owners of property in the area, the capital-backed expectations of landowners in the area, and the land use plan for the area, as adopted by the community.

It is also worth noting that the ORW petition process misrepresented to the effected landowners and local governments the reach of the proposal. It was only after gaining support, based upon its misrepresentations, that the reach of the ORW Petition now extends to tributaries and any connection to groundwater. The intent of the proponents of the Petition and the DEQ, with its preferred alternative are clear: The intent is to stop all development in the area at the expense of those landowners who have any property outside the boundary of the Water and Sewer District, and intend to develop that property, and at the expense of individuals to hope to live in the area. Under *Del Monte Dunes* and the other Supreme Court decisions discussed above, the Petition is arbitrary, capricious, constitutes a taking and illegal.

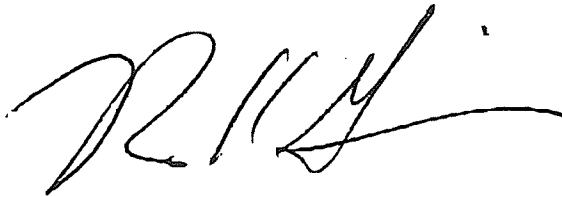
Finally, no meaningful opportunity to be heard with these unprecedented, fast-track scheduling for the EIS process. For instance, comments are due for the Draft EIS on October 27, 2006 for a complex EIS draft that was released in September, 2006. Even more blatant is the requirement that all comments concerning the proposed rule-making are due on November 2, 2006, only eight (8) days after the October 25, 2006 hearing date.

In sum, the Petition, EIS and preferred alternative are substantively and procedurally flawed.

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Sincerely,

GOETZ, GALLIK & BALDWIN, P.C.

A handwritten signature in black ink, appearing to read 'BKG', with a long horizontal flourish extending to the right.

Brian K. Gallik

BKG/pal
cc: Clients

S, LU, WQ, F

Leanne Roulson

From: Charles E. Hansberry [cehansberry@GARLINGTON.COM]
Sent: Friday, October 27, 2006 5:13 PM
To: Peterson, Lisa; Hallsten, Greg
Cc: Bob Sumpter; Stephen R. Brown
Subject: Comments on Draft EIS for Gallatin River ORW

Attachments: Canon4A4A7D-Exchange-10272006-170602.pdf



Canon4A4A7D-E
ange-10272006

Greg and Lisa:

Please find enclosed comments of Yellowstone Developments LLC and Yellowstone Mountain Club on the Gallatin River EIS. A hard copy will also be sent in today's mail. Please call me if you are unable to open these or otherwise have questions.

Charles E. Hansberry
Garlington, Lohn & Robinson PLLP

(406) 523-2500



199 West Pine Street
P.O. Box 7909
Missoula, Montana 59807-7909
(406) 523-2500
Fax (406) 523-2595
www.garlington.com

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Mr. Greg Hallsten
Montana Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

*RE: Comments on the Draft Environmental Impact Statement for the
Gallatin River ORW Designation*

Dear Mr. Hallsten:

This office represents Yellowstone Developments LLC and Yellowstone Mountain Club, LLC, collectively The Yellowstone Club ("TYC"). These comments are presented on behalf of our clients to the Draft EIS for the Gallatin River ORW Designation. The TYC generally supports measures designed to maintain and improve the water quality of the Gallatin River, as is evidenced by the landmark 2001 agreement between it, other developers with the Big Sky Water and Sewer District for the use of land application rather than discharge of effluent. However, it is very concerned that ORW designation is being proposed as a popular reaction to a perceived, but unproven, need. Moreover, after thorough review, it appears the Draft EIS and the associated rulemaking are being rushed through – without the necessary "hard look" required by MEPA – for the sake of presenting it in the upcoming legislative session.

COMMENTS

SECTION 1.2.2: The principal criteria for ORW designation is that "there is no other effective process available that would achieve the necessary protection." Draft EIS at 1. First, the Draft EIS assumes that the level of protections from ORW designation are "necessary protections." This is incorrect, as the analysis first needs to begin with what protections are *necessary* (not just desirable or popular) and then proceed to how those protections can be achieved. Second, TYC contends that there are other processes available that can achieve those protections, specifically the nondegradation policy and cumulative analysis already allowed under Montana law. Furthermore, other protective mechanisms need to be looked at, including federal law, zoning, and private agreements. Although the

David C. Berkoff
J. Michael Bouchee
Stephen R. Brown
Gary B. Chumrau
Randall J. Colbert
Lawrence F. Daly
Kathleen L. DeSoto
Candace C. Fetscher
Lucy T. France
Gary L. Graham
Charles E. Hansberry
Gregory L. Hanson
Malin Stearns Johnson
William Evan Jones
Maureen H. Lennon
Bradley J. Luck
Robert C. Lukes
Kathryn S. Mahe
Alan F. McCormick
Charles E. McNeil
Anita Harper Poe
Shane N. Reely
Larry E. Riley
Susan P. Roy
Robert E. Sheridan
Brian J. Smith
Peter J. Stokstad
Kevin A. Twidwell
William T. Wagner
Hillary A. Wandler
Kelly M. Wills

A. Craig Eddy, MD, JD
Of Counsel - Health Law

J. C. Garlington
1908 – 1995

Sherman V. Lohn
(Retired)

R. H. "Ty" Robinson
(Retired)

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Montana Department of Environmental Quality

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DEQ lacks the authority to mandate these other mechanisms, the statute, MCA § 75-5-316(3)(C)(iii), is not so limited and MEPA does not exempt from analysis anything outside of DEQ's immediate jurisdiction and authority.

SECTIONS 1.3.2 & 3.3.3.1: The Draft EIS lists six tributaries of the Gallatin River to be on the 303(d) list of threatened or impaired water bodies. The 2006 303(d) lists only five: the Middle Fork, the West Fork, the South Fork, Cache Creek and Taylor Creek. While the main stem of the Gallatin is not on the 303(d) list, some of these tributaries, specifically the West Fork and the South Fork, are within the footprint, and thus a portion of these tributaries receive ORW designation as well. TYC contends that a river that is threatened or impaired for any use does not meet the criteria for designation as an ORW under MCA § 75-5-316(4). The footprint of the ORW needs to be reduced where it expands into these tributaries on the 303(d) list.

Furthermore, it is quite likely that the listing of these tributaries and associated Total Maximum Daily Loads ("TMDLs") will still have a major impact on how development occurs within the footprint. This is particularly true for West Fork, which runs through Big Sky. Also ignored is the following restriction found in the Court's order in *Friends of the Wild Swan v. EPA*, 130 F. Supp. 1204, 1206 (D. Mont. 2000):

Until all necessary TMDLs are established for a particular WQLS, neither the EPA nor the State of Montana shall issue any new permits or increase permitted discharge for any permittee under the National Pollutant Discharge Elimination System permitting program or under the Montana Pollutant Discharge Elimination System permitting program.

TMDLs are scheduled to be approved for these tributaries in 2007-2009. These TMDLs should assist in protecting and enhancing water quality and may eliminate the need for ORW designation (or make ORW designation moot). The impact of the TMDL process and the *Friends of the Wild Swan* decision need to be addressed in the Draft EIS.

For the most part, the TMDL process is simply ignored in the Draft EIS. Presumably, this is because DEQ has concluded, much later in the Draft EIS, that the principal sources of nutrient loading impacted by ORW designation are residences that use traditional septic systems and drain fields and, since they are non-point sources, compliance with a TMDL is

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voluntary because an MPDES permit is not required. *See* Draft EIS at 192. While unpermitted non-point sources contribute 90% of all pollution to streams, the vast majority comes from sources other than septic systems (i.e. agriculture, storm-water runoff, silviculture). Montana Nonpoint Source Management Plan: A Watershed Approach (2001) <http://www.deq.mt.gov/wqinfo/nonpoint/chapter2.pdf>. DEQ's conclusion assumes that voluntary compliance with a TMDL and associated restoration plan is insufficient to protect water quality in the Gallatin River. Yet, DEQ holds Gallatin County as a model for instituting voluntary improvements in septic systems. *Id.* at 17. Again, this is inconsistent with the conclusion that ORW designation is the only process available to achieve necessary protections.

SECTION 2.1: The Draft EIS states that "The No Action Alternative assumes the Board would not initiate rulemaking and the ORW designation would not proceed." Draft EIS at 11. Yet, we note that the DEQ has already initiated rulemaking prior to even completing the EIS process and issuing a Record of Decision. We believe this is a violation of both the ORW statutes, specifically MCA § 75-5-316(8), as well as MEPA itself, which requires that the EIS contain a "meaningful no-action alternative analysis." MCA 75-1-201(1)(b)((iv)(C)(IV). However, no meaningful analysis can be made where the decision to proceed with ORW status has obviously been made. By initiating rule-making, the DEQ has essentially eliminated the no-action alternative.

SECTION 2.3.1: In conducting the analysis for setting trigger values, as well as determining the "necessary protections" pursuant to MCA § 75-5-316(3)(C)(iii), the Draft EIS assumed that 100% of phosphorous and nitrate reaches the receiving water and there is no attenuation through natural processes. Draft EIS at 20. This is an invalid assumption, as those processes exist and can be quantified. This naturally skewed the analysis, expanded the scope of the ORW footprint and caused the level of restrictions associated with ORW designation to be grossly overprotective.

Furthermore, the DEQ needs to expressly confirm that projects and businesses outside of the designated ORW footprint will not be restricted in any manner by ORW designation. Although the Draft EIS suggests that ORW restrictions would not be imposed directly, they can potentially be imposed indirectly through a cumulative analysis or other approach. If indirect impacts are possible to businesses outside the footprint, the scope of the Draft EIS needs to be expanded to include those.

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It appears that DEQ has set the trigger values, and thus determined the allowable density, under ORW designation assuming year-round use of residences at low-flow rates. While this approach is arguably permissible where there is significant year-round occupancy, this area is characterized by seasonal use.

SECTION 2.7.3: One of the alternatives considered but dismissed was limiting the total number of homes that could be built within the footprint. This alternative was dismissed because DEQ lacks the authority to regulate development or impose zoning restrictions.

Yet, TYC believes that ORW designation is essentially “*de facto*” zoning and accomplishes such limitations anyway, as the Draft EIS acknowledges throughout the document. *See e.g.* Draft EIS at 158 (“The primary expression of ORW land use impacts is the difference in magnitude of development that would be allowed or expected [under the various alternatives]”). TYC is concerned that legislating development densities and zoning limitations through ORW designation usurps the established zoning process and removes planned development from the local forum.

Furthermore, ORW designation should be very closely scrutinized where the principal impacts are to economic supply and demand, rather than water quality. For example, on page 179 of the Draft EIS, the DEQ acknowledges that, while the principal impact on property values from increased water quality is generally unknown (*see* comment on Section 3.5.3.9, below), ORW designation will “limit the increase in supply of new dwelling units, and with a given level of demand, increase prices for existing and new units above what they would otherwise be....”

SECTION 3.4.3.2: While TYC believes that the largest impact of ORW designation will be on private businesses, it is important to note that ORW designation will impact the ability of federal agencies to expand their services.

SECTION 3.5: The Draft EIS’s inventory of socioeconomics for the region is grossly outdated (based primarily on 2000 census data) and significantly understated. As the fastest growing region in Montana, it is important that the Draft EIS rely on the most current data available. Next month in November, Susan Ockert, Senior Research Economist with the Montana Department of Commerce is due to publish *Economic Impacts of Big Sky*, which

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analyzes the socioeconomic values of the area encompassed by ORW designation. The DEQ should consider and incorporate Ms. Ockert's analysis in any final EIS and ROD.

SECTIONS 3.5.3.4 & 3.5.3.5: Completely missing from these sections, and the Draft EIS in general, is any mention of the ski or golf industry, which by far accounts for most of the economic activity in the area. The primary impact from ORW designation is a very sharp decline in available housing and commercial square footage. Because both the ski and golf industries depend on that housing and commercial space, it is critical that the Draft EIS analyze the economic impacts to those industries. Fishing and rafting are not the only recreational pursuits impacted by ORW designation.

SECTIONS 3.5.3.6 & 4.5.1.1: These sections set out to prove a very basic premise: a reduction in catch rates and size of fish caught will result in a reduction in angler use. The draft EIS cites a 1987 study conducted by the Montana Department of Fish Wildlife and Parks for an estimate that a 10% reduction in catchable trout would reduce angler use by between 4% and 5%. While TYC does not dispute the basic premise (less fish = less anglers), it questions if this quantification of the impact remains valid. The data relied upon in the study is almost twenty years old and the study was conducted before the explosion in popularity of fly fishing in Montana (Indeed, "A River Runs Through It" was not even released until 1992). The river saw almost a 30% increase in angler use from 1999 to 2003 (Draft EIS pg. 81).

While the Draft EIS is careful not to quantify the economic impact from theoretical angler dissatisfaction, it certainly "suggests" there is a cost associated with the no-action alternative. TYC believes that the Gallatin River will remain a very popular place to fish, particularly for non-residents, and that impacts of water quality on anglers is not as sensitive as suggested in the Draft EIS. In fact, surveys conducted ten years later list "canyon scenery" as by far the largest reason for visiting the area. See Draft EIS pg. 84. Tourism is likely to continue to grow and, if there is a loss of anglers from any reduction in water quality, it will either be minor or offset by growth in other recreational users.

SECTION 3.5.3.8: It is simply invalid to confine the analysis of economic impacts of ORW designation to just fishing, as that segment of recreation is simply dwarfed by other recreational pursuits in the area. For example, Big Sky reported 300,000 skier days for the 2005-2006 ski season. At a cost of \$65 for lift ticket and \$100 for daily incidentals (food,

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lodging, rentals, etc.), the total value from skiing at Big Sky alone is \$49.5 million. This figure does not include Moonlight Basin or TYC. Fishing, however, is valued in the Draft EIS at only \$3.84 million, or less than 8% of skiing at Big Sky. Yet, there is absolutely no mention or analysis in the Draft EIS of the impact of ORW designation on the ski industry.

Of course the ski industry, while the largest, is only one portion of the overall recreational segment of the economy of the region. Last year, the Resort Tax District encompassing Big Sky collected \$2.4 million on approximately \$80 million in gross revenue. This tax applies only to luxury items, not everyday consumer goods. This figure also does not include lodging tax. Data and information from the Resort Tax District was not provided in the Draft EIS, nor was there any analysis of the how the ORW designation would impact those tax revenues or revenues for state lodging tax.

SECTION 3.5.3.9: Again, TYC does not dispute the basic premise of this section: water quality has an impact on property values. TYC presumes that conducting an original hedonic property study for the Gallatin River would be cost-prohibitive, which is why it was not done. However, TYC questions any reliance on studies which are very different (i.e. water clarity of lakes in Maine) to quantify the impact from ORW designation here. Are the differences in water quality in the study far greater or comparable to the difference in water quality between the “No-action” alternative and ORW designation? The issues and factors affecting property values for lake-front property in Maine are too remote to make the study a valuable comparison. Yet, DEQ uses this figure in various places to justify or offset the costs of ORW designation. *See e.g.* Draft EIS at 184. Until a hedonic study is conducted, these are invalid assumptions to make.

Furthermore, the housing market in the area is principally driven by the ski industry, not the fishing industry. It is highly improbable that any minor drops in angler satisfaction/ water quality will have significant impacts on property values. The DEQ needs to find more appropriate examples and associated studies, for example studies of other western skiing communities, rather than lake-front property in Maine.

SECTION 3.6.3.2: In a number of critical areas, TYC noted that DEQ failed to conduct the necessary analysis to review all the impacts if the study was not immediately available. A hedonic property value study is one such area. However, this deficiency in the Draft EIS was not confined to just economic issues. Where the study suggested a impacts to fish and

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wildlife that would not support ORW designation, they were either ignored, or the Draft EIS did not take the next steps to validate the study. The 2005 Bollman study in this section is a perfect example. The study suggests that issues such as drought and temperature – not nutrient loading – resulted in a decrease in water quality. The Draft EIS simply rejected the study, since it did not provide low flow or water temperature data. However, that information is available through the USGS and the Draft EIS should have further validated the study before simply dismissing it.

SECTION 4.4.3.1: This section describes the primary impacts on development from ORW designation. There are quite a number of assumptions DEQ makes which are not justified. First, the DEQ assumes that all new dwelling units will rely on conventional septic tank and drain fields. Yet, current zoning regulations require hookups to sewer where possible. Draft EIS at 70. Also, DEQ assumes full-time occupancy, where many of the homes particularly in the Big Sky area are seasonally occupied.

In any event, under these assumptions, ORW designation without any mitigation would result in a 90% reduction in allowable residential development (652 DU down to 75 DU) and a 99.4% reduction in allowable commercial/community development (419,000 square feet down to 2,645 square feet). The Draft EIS estimates that this results in a net economic loss of \$6.86 million annually in reduced wages and salary. This figure is grossly understated, as described in more detail below. Allowable development goes up some with various mitigation measures (i.e. sand filters, etc.). However, as a practical matter, zero discharge and centralized septic systems will be necessary before currently allowable development can occur under the ORW designation.

SECTION 4.5.1.1: At many times throughout the Draft EIS, specifically on page 177, the No Action Alternative is characterized as “unconstrained build-out.” This is an incorrect characterization as development is very much regulated and constrained in the area. This type of characterization leaves a falsely negative perception with the public and postures this issue as “Fish vs. Unchecked Growth.” Instead, the No Action Alternative should be characterized as “currently allowable levels of build-out” or “build-out under current constraints.”

SECTION 4.5.2.1: This section contains no analysis of the economic impacts to the real estate industry from ORW designation. Assuming no mitigation, ORW designation will

Mr. Greg Hallsten

Montana Department of Environmental Quality

*RE: Comments on the Draft Environmental Impact Statement for the
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result in loss of 577 residential units and 416,355 square feet of commercial space. This would represent a huge loss in economic value which should have been analyzed in the Draft EIS.

Nevertheless, some rough calculations can be made. Although the median price of a home listed in the Draft EIS is \$255,000, there is reason to doubt that figure. In any event, that figure does not represent the cost to build a new home. The community is currently experiencing construction costs in excess of \$200 per square feet. For a 3000 square foot home, the cost is approximately \$600,000, which does not include the lot. If we use the figures in the Draft EIS, the least expensive lot in that area is \$320,000. Draft EIS at 186. However, lot prices can easily rise to millions. This results in a loss of \$530 million, or over \$53 million annually if we assume a build out over ten years. This level of loss could arguably rise to a compensable taking, a burden that would fall on the taxpayers.

A similar analysis can be done with the loss of commercial space. For commercial space, TYC sees construction costs of \$100 per square foot, for a total loss of \$41.6 million, or \$4.16 million a year on a 10-year build out. That figure does not include the cost of any land underlying the space.

All told, the loss to the real estate and building industry could easily be in excess of \$57.16 million annually. Yet, the Draft EIS conducted no analysis of this possibility.

SECTION 4.5.2.4: This section estimates the cost of mitigation that would become necessary with ORW designation. First, it looks at some individual alternatives, like incinerator and composting toilets. However, these alternatives are impractical given their overall effectiveness, the scale of the building and the existing market for high-end homes.

Instead, the only possible alternative will require the installation of a community treatment system. Based on the hook-up charge for the Big Sky Water and Sewer District ("BSWSD"), the DEQ estimates this at \$3,500 per residence, or less than 1.4% of the \$250,000 median family home. This figure is misleading, as the \$3,500 figure is based on a two bedroom/two bathroom residence, whereas the median family home in that area is likely larger. The BSWSD district also notes that a number of Boyne properties must pay double, \$7,000, to connect. Also, this figure is a one-time connection charge and does not include monthly fees, which for BSWSD is its primary source of revenue. *See*

Mr. Greg Hallsten

Montana Department of Environmental Quality

RE: *Comments on the Draft Environmental Impact Statement for the
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<http://bigskywatersewer.com/meetings/09-19-06.Financial%20Reports.pdf>. Finally, there are other sources of revenue for BSWSD – which may not be available to new community systems – which presumably offset the hookup fee. *Id.*

Furthermore, the Draft EIS provides no analysis of whether the BSWSD is a good comparison to use for other proposed developments. Single developments or multiple developments working together will have to achieve certain economies of scale to make construction of community systems feasible. There needs to be some analysis of whether that potential exists.

TYC believes that significantly more research needs to be conducted to truly assess the cost of establishing and building a community treatment system, rather than relying solely on BSWSD. The Draft EIS mentions that Firelight Meadows was forced to build its own system after its request to connect to BSWSD was rejected. Yet, there is no analysis of the cost of that endeavor.

The Draft EIS mentions that water quality trading may be another option to alleviate some of the restrictions imposed by ORW designation. There are two problems with relying on this possibility as mitigation. First, there is no analysis of whether such a market could be created as a practical matter given geographic and economic limitations. Second, while water quality trading is currently recognized under Region VIII guidance, it is unclear if it is allowed under Montana law. There needs to be a legal analysis of whether such trading is in compliance with Montana (and federal) law before a potential market for water quality trading can be suggested.

SECTION 4.7: TYC does not dispute that increases in nutrient loading has adverse impacts on fisheries. However, as the Draft EIS acknowledges, “[w]aters in the ORW reach of the Gallatin River do not currently, at any time of the year, approach the recommended maximum nitrate concentrations that could cause measurable sub-lethal problems in fish.” Draft EIS at 198. Instead, the principal – indeed only – justification for ORW designation is the theoretical potential that 652 new dwelling units could be built in the future that all use traditional septic systems with drain fields. However, there is no analysis in the draft EIS regarding whether this is realistically possible.

Mr. Greg Hallsten

Montana Department of Environmental Quality

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Furthermore, even if this level of development occurred, nitrate levels would remain below the 2.0 mg/L recommended level. Instead, it is only if there was a leak from BSWSD or if it started to discharge would the recommended level be exceeded. There is no analysis in the Draft EIS regarding this theoretical possibility either.

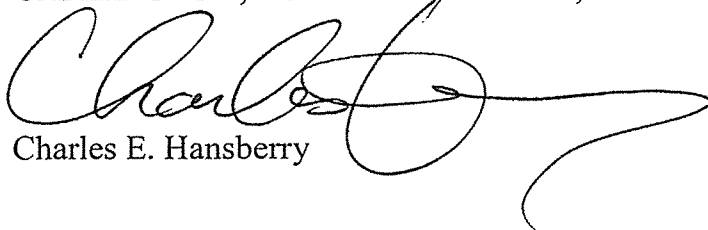
CONCLUSION

TYC supports meaningful protections for water quality. However, it cannot support a process that is being rushed just to submit to the legislature in the next session. Instead, it is imperative that the MEPA process be followed so that correct conclusions can ultimately be made.

Although some impacts are analyzed, many impacts are ignored. While the Draft EIS analyzes potential for impacts to fisheries, given that certain events occur (652 residences constructed all on septic systems and a malfunction at BSWSD), there is no analysis in the Draft EIS of the realistic probability of those events occurring. Moreover, the cumulative socio-economic impacts of ORW designation are ignored, which grossly under-values those impacts in the Draft EIS. Full analysis of these impacts must be made before an EIS can be finalized and rule-making initiated.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

A handwritten signature in black ink, appearing to read 'Charles E. Hansberry', with a long, sweeping horizontal line extending to the right.

Charles E. Hansberry

CEH/sec

S

Leanne Roulson

From: Gordon Haugen [gnhaugen@msn.com]
Sent: Friday, October 27, 2006 9:33 AM
To: Hallsten, Greg
Cc: Gordon Haugen; Jim Paffausen; Rick Arnold
Subject: Gallatin River designation ORW

+ vote

Greg Halsten
Department of Environmental Quality
P.O. Box 200901
Helena Montana

The Headwaters Sportsman Association as reviewed the DEIS for the designation of the Gallatin River as a " Outstanding Resource Water ". We are aware of some of the negative comments made at the public hearing held at the Gallatin Gateway Community Center. It is very unfortunate that some folks look at their own shot term finical gain and not at the look term benefits.

long?

The Headwaters Sportsman Association strongly supports the designation of the Gallatin River as a " Outstanding Resource Water "

Board of Directors
Headwaters Sportsman Association
Jim Paffausen, President.



United States
Department of
Agriculture

Forest
Service

Gallatin National Forest

Supervisor's Office
10 East Babcock
P.O. Box 130
Bozeman, MT 59771

LU.

File Code: 2500

Date: October 24, 2006

LAND use
note +

Greg Hallsten
Director's Office
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

RECEIVED

OCT 25 2006

DEQ
DIRECTOR'S OFFICE

Dear Mr. Hallsten:

Thank you for the opportunity to review the Draft Environmental Impact Statement for the Gallatin River Outstanding Resource Water Designation (9/06). We have been in close coordination with the Montana DEQ during the last 2 years on this project and the DEIS consultant (Garcia and Associates). The Gallatin National Forest provided much of the water quality data and monitoring information used in this DEIS.

LAND USE

The DEIS in Table E-1 combines the effects of roads, timber harvest, and livestock allotment management into a "Land - use" general category. In section 3.4.3.3 (page 78) the DEIS provides only cursory description of the land exchange, fuel treatment, timber program, mining, and livestock grazing programs and activities on the Gallatin NF. We provided the DEIS consultant considerably more detailed information about those National Forest programs. We understand that the Outstanding Resource Water (ORW) administration process would not directly regulate the non-point sources from these programs but it may be useful to summarize these programs in more detail in the FEIS. The Gallatin National Forest staff can help if additional information is needed.

We understand that the ORW process will be subjected to a rigorous review process by Montana DEQ, Board of Environmental Review, and would require Montana Legislature concurrence and Montana Governor approval before enacted. Some aspects of the proposed designation may be controversial. An ORW designation, however, could be very compatible with Gallatin National Forest management of the Gallatin River watershed and river corridor. The Gallatin National Forest has worked with numerous entities during the last 20 years to acquire (by exchange and purchase) private sections in the Gallatin river corridor, and have decommissioned approximately 25% of the roads in the Gallatin River watershed. Much of the motivation for the land acquisition was to maintain or improve hydrologic condition and water quality within the NF boundary and eventually the Gallatin River. The Gallatin National Forest manages much of the river corridor which has high value and very heavy public use (fishing, rafting, camping, scenery enjoyment).

Gallatin River Outstanding Resource Water Designation water quality constraints would be a mechanism to allow the Montana DEQ more authority in protecting the Gallatin River water quality. The Gallatin National Forest has no objections to and supports the proposed amendment of ARM 17.30.617 to designate the main stem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW),



and ARM 17.30.638 to add a new sub-section clarifying that discharges to ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges.

If you have additional questions or information needs from the Gallatin National Forest on this project please contact our Forest Hydrologist, Mark Story at 406-522-8573 or mtstory@fs.fed.us.

Sincerely,



FOR REBECCA HEATH
Forest Supervisor

Leanne Roulson

S, WQ

From: Nick Hether [nick.hether@earthlink.net]
Sent: Friday, October 27, 2006 12:48 PM
To: Hallsten, Greg
Subject: Gallatin River ORW Designation

Dear Mr. Hallsten,

I am writing this note to offer comment on the designation of the Gallatin River as an "Outstanding Resource Water" (ORW).

I am very much in favor and strongly support designating the Gallatin as an ORW.

The Gallatin River is simply too important a resource not to handle without a carefully thought through stewardship effort. I have lived in other areas of the country where development pressure was high and where the rivers were not protected. The outcomes were not good.

The Gallatin River is part of the excellent quality of life of this valley. It is, in part, what brings people here and is responsible for some of the growth that could threaten it. This river is why I came back to Montana after finishing my graduate training at MSU many years ago. It is an important recreational resource.

The Gallatin supports a significant part of our economy because of the fishing, rafting, hiking and other outdoor opportunities that keep local businesses flourishing.

In truth, I was quite surprised, after reviewing the plans and proposed requirements for the ORW designation that there does not already exist a more strict set of requirements for control of septic and waste systems. This should be standard for protecting our water ways and the Gallatin in particular. I have installed such systems on my own properties for homes I have owned in other states in the past and can tell you from personal experience they cost very little relative to the cost of the home. This should not be an impediment to protecting a river of such value as the Gallatin. I will be the first to tell you that as property owners we have rights, but I will also tell you that with property ownership comes great responsibility. One of those responsibilities is protecting the free flowing waters and wonderful rivers such as the Gallatin so that it will be here 100 years from now.

With the pressure all our resources are under and will continue to experience it is essential we begin the protection process now. The ORW designation for the Gallatin is a good step in that direction.

Sincerely,

Nicholas Hether

373 Sir Arthur Dr, Bozeman, MT 59718 Phone (406) 209-5499

10/30/2006

WQ, S

Leanne Roulson

From: Verne House [vhouse@yahoo.com]
Sent: Thursday, October 26, 2006 11:13 PM
To: Hallsten, Greg
Subject: Input on ORW proposal

Attachments: ORW input ltr.doc

+ vote



ORW input
ltr.doc (50 KB)

Dear Mr. Hallsten: I am out of state. Please accept the
attached input regarding the ORW designation for the West Gallatin River.

Thank you,

Verne W House

Verne W. House, PhD
4740 Sourdough Rd
Bozeman, MT 59715
vhouse@yahoo.com
vhouse@montana.com
Tel: (406) 586 8604
eFax: (413) 826 7005

VERNE W HOUSE, PHD

4740 Sourdough, Rd
Bozeman, MT 59715
406 586 8604

October 30, 2006

Montana Department of Environmental Quality, Director's Office
4321 First Street
Helena, MT 59620-0901
Attn: Mr. Greg Halsten

Dear Mr. Halsten,

Please accept my comments in support of designating the canyon section of the West Gallatin River as Outstanding Resource Water. I participated in the scoping meeting at Gallatin Gateway and I have read most of the proposal. What I have read has not changed my opinion of the proposal but it has helped me to define what I think about ORW designation.

ORW designation should be adopted, even though it would allow continued degradation of water quality by "grandfathered" users. ORW is too weak, in my opinion, but it is step toward protecting both water quality and users of water and riparian lands that depend on having high quality water.

Regulating to a cumulative standard might lend itself to setting up a system of tradable water quality rights, similar to the tradable development rights in Bridger Canyon.

The "no action" alternative would weaken the local economy. Too much (or careless) development in the West Gallatin drainage will adversely affect that part of the housing market and other segments of the local economy that benefit from high quality water. I respectfully ask the adoption of ORW designation for the West Gallatin.

Thank you,

Verne W House, PhD

Hallsten, Greg

LU, WQ, S

From: JasWmJ@aol.com
Sent: Tuesday, October 24, 2006 2:19 PM
To: Hallsten, Greg
Subject: DEIS Comments
Attachments: DEISRes24Oct06.doc

Dear Mr. Hallsten,

I have attached my comments as Word File.

I support the Outstanding Resource Designation.

The letter includes:

My experience in matters of river preservation deserves mentioning and may be summed up in a letter I wrote thirty-two years ago this month. The letter from the Village of Marine on St. Croix is found on Page A-28-29 of the U.S. Department of Interior's "**Final Environmental Statement Master Plan FES 75-69 Lower St. Croix National Scenic Riverway.**"

I wrote and signed the letter as the Mayor of Marine. The Council supported the EIS and I concluded with this statement that I now repeat as it also relates to the Gallatin. I exchange "*Gallatin*" for the St. Croix:

"Hopefully, the people will continue to enjoy the *Gallatin* River and its environs while maintaining the dedication to preserve this valley for future generations. Somewhere in this world of short term decision making, protecting 'hindsides' and people problems has to come the vision of a tomorrow, a recognition of what our true legacy should be. The *Gallatin* River is our legacy, it is worth saving." James W. Johnson; first written for the St. Croix Riverway October 16, 1976

Jim Johnson

.....

James Wm Johnson
55 Gray Owl Lane
PO Box 160996
Big Sky, MT 59716-0996
406.995.3262

Tuesday, October 24, 2006

Montana Department of Environmental Quality
Director's Office
PO Box 200901
Helena, Montana 59620-0901

Attention: Greg Hallsten

Subject: Gallatin River EIS

Dear Mr Oppen:

I have reviewed the DEIS. I whole-heartedly support the Proposed Action
Alternative: **Outstanding Resource Designation.**

Background

My experience in matters of river preservation deserves mentioning and may
summed up in a letter I wrote thirty-two years ago this month. The letter from the
Village of Marine on St. Croix is found on Page A-28-29 of the U.S. Department of
Interior's "*Final Environmental Statement Master Plan FES 75-69 Lower St.
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"Hopefully, the people will continue to enjoy the *Gallatin* River and its
environs while maintaining the dedication to preserve this valley for future
generations. Somewhere in this world of short term decision making,
protecting 'hindsides' and people problems has to come the vision of a
tomorrow, a recognition of what our true legacy should be. The *Gallatin* River
is our legacy, it is worth saving." James Wm Johnson; first written for the St.
Croix Riverway October 16, 1976

I was part of the process to create that 1975 Master Plan; and, twenty-five years later
one of only two persons from the original Team to design the 1999 Master Plan. I
attended over sixty Planning Team meetings in 1998 and 1999, again representing
the city of Marine on St. Croix.

My wife and I first came to Big Sky to ski their first season in 1973-74. We have
owned a home in Big Sky for fourteen years.

.....

Predictable Resistance

Real Estate interests are currently circulating an email that is wholly inaccurate.

It would not take a Ph.D. in History to guess who the largest objectors to the St. Croix's designation and its first EIS were. Their arguments were identical to those now being proffered in 2006 against the Gallatin EIS. Identical!

The Big Sky Developers and Real Estate interests offer objections that are four in number in their recent email to garner support for trashing the EIS.

The tragedy of a campaign such as now being conducted by them is that the designated persons reading their email and perhaps responding will not have taken the time to actually read the DEIS. It all reminds me of a petition I once saw in the entryway of a local St. Croix bar. The petition distributors were lobbying against a regulatory effort having nothing to do with their headline on the petition that read: "If you want to continue to hunt and fish please sign the petition below."

1. The first argument is that the ORW "will shut down" building and development. To whit:

"1. The ORW will shut down almost all of the building and development business in the areas it deems are located within the 'ORW footprint', which is defined as being any property that has a 1 year hydrological connection to the main stem of the Gallatin River. That term could encompass any development in the Big Sky area that is not located within the geographic boundary of the Water and Sewer District."

The EIS speaks of 1% increase in the cost of a home with the employment of an alternative septic system versus using conventional units. I would suggest that this 1% is not equivalent of a "shut down."

2. Again, their item #2 uses the term "shut down." It further adds the threat "the state will confiscate almost all of the developmental rights associated with that property." I quote

"2. The current draft of the Environmental Impact Statement for the ORW shows the "ORW footprint" as encompassing all property that is located along Highway 191 and segments of the South Fork and West Fork rivers. In addition, if the ORW is adopted with the hydrological connection language referred to above, then other areas like the Yellowstone Club, Spanish Peaks Resort Estates, Moonlight Ranch, etc. could be brought under the ORW jurisdiction and shut-down. Again, if your property in Big Sky is located outside of the Water and Sewer District boundary, then you are vulnerable to the risk that the state essentially will confiscate almost all of the development rights associated with that property."

The environmental history of some of these named developers is well known to the state. Another tool to hold them accountable should be encouraged versus demonizing the ORW into it being another “takeover” of government. The arguments of the “Wise Use” cognoscenti do not belong in the Gallatin Valley.

3. For lo these many years I have heard this same bromide. “Jobs.” “Taxes.” The jobs will be destroyed. The tax base will be “hit.” Jobs and taxes are what at stake. Nonsense. What is really at stake is the Gallatin, and a polluted Gallatin would really affect jobs and taxes. Talk about the lack of a vision.

“3. There are an estimated 10,000 jobs that are created by all of the economic activity in the Big Sky area and many if not most of those jobs relate to the construction, development and real estate industries. A large percentage of those jobs will be destroyed by an ORW designation. Thus, anybody who is involved in any manner with these industries will be severely affected by the ORW. This economic hit would be devastating to the area and to the tax bases of Gallatin and Madison counties.”

Only 10,000 miles of rivers out over 3 million miles in the United States has any significant environmental protection to speak of. How many rivers do you know that can begin to compare to the Gallatin?

4. Next comes the predictable “bad science” and lack of “community involvement” accusation. More garbage.

“4. The EIS prepared by the Department of Environmental Quality contains many serious flaws that would have terrible effects to the Big Sky community as explained above and yet the DEQ is rushing the EIS through with a minimum amount of community involvement and on a fast track schedule that experienced environmental attorneys have never seen before. Usually an EIS, especially one of this magnitude, will take a number of years to adopt.

“However, since the DEQ is doing the EIS itself and not some company such as a mine operator, all of the usual procedural safeguards and time frames to provide meaningful input from the community into this document are being discarded. It is essential that the DEQ slow the EIS adoption process down in order to give the community a chance to provide its input.”

“Serious flaws” with “terrible effects.” No flaw is mentioned. Moreover, we are to presume that being “shut down,” and jobs and taxes are the terrible effects.

I find the prospect that “a mine operator” would have provided “usual procedural safeguards and time frames” amazing. This has to be a typo.

An EIS does not have to “take a number of years.” This topic has been on the front burner for a long time. The process has been timely. There has been ample

time for input. This comment is just a mechanism by the opponents to delay in order to allow further degradation.

I am again reminded of a recent *New Yorker* article. Redwoods in California had timber interests working 24/7 including using large vapor lights hauled in order to drop the ancient redwoods, the world's largest trees before President Carter's Rule came into affect. They almost dropped THE largest one. That tree was just recently found a short distance from the CAT-made roads of the Carter era.

Conclusion and Recommendation

Thank you for the opportunity to review and comment on the EIS.

A PR program such as being conducted by Big Sky Real Estate interests using this irresponsible and inflammatory language will generate some heat. Sadly, they do not understand or see "the vision of a tomorrow, a recognition of what our true legacy should be."

I feel confident that the resource that cannot speak for itself will be represented when the decision is made on the EIS.

So, I once again conclude:

Hopefully, the people will continue to enjoy the Gallatin River and its environs while maintaining the dedication to preserve this valley for future generations. Somewhere in this world of short-term decision-making, protecting "hindsides" and people problems has to come the vision of a tomorrow, a recognition of what our true legacy should be. The Gallatin River is our legacy, it is worth saving.

Sincerely,

James W. Johnson

jaswmj@3rivers.net

October 22, 2006

Montana Department of Environmental Quality
Planning Prevention and Assistance Division
Water Quality Planning Bureau
Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

RECEIVED

OCT 24 2006

DEQ
DIRECTOR'S OFFICE

RECEIVED

OCT 24 2006

DEQ
PPA-TFA

RE: EIS Comments from Kevin Kelleher, 54275 Gallatin Road, Gallatin Gateway, MT 59730

As a Gallatin Canyon riverfront landowner since 1981 with three contiguous lots located on the Gallatin River, I have serious concerns regarding the EIS for the proposed ORW designation for the section of river from YNP (US 191/milepost 32) to Spanish Creek at milepost 68.2. My properties are located near milepost 55 on US 191 at Karst. All three of my lots border US 191 and the Gallatin River.

The sizes of these properties are as follows: Section 1 Township 6S Range 4E P.M.M. Tract One 2.21 acres; Tract Two 2.21 acres; Tract 1406 COS 1.54 acres. There is a home and two barns on Tract One built from circa 1971 to 1989. The well and septic tank are located on Tract One while the drainfield and replacement area are located, by perpetual easement, on Tract Two. A 2,000 square foot barn was built on Tract Two in 2002. It serves as a hay storage barn and has no water or sewer. Tract Two has an MDEQ approved septic drainfield and well site in the northeast area of the tract for a three-bedroom home (1989) COS 1406, (1.54 acres) also has the same size, MDEQ approved site (1987) in the southeast corner of this 1.54 acre tract.

Both of these systems are located very close to their east property lines along U.S. 191 – far off the Gallatin River. The yet unimproved home sites are located toward the river. The Gallatin Canyon/Big Sky Planning and Zoning District, approved July 30, 1996, established a 50 foot setback from the West Gallatin River for lots platted prior to July 30, 1996 and 100 feet for new lots and subdivisions after that date.

Also in 1996 a floodplain study was completed for the West Gallatin River from Buck Creek milepost 41 to Moose Creek at milepost 56. This state and federally- approved document clearly shows my two building sites and current home and appurtenant structure are out of the floodplain. With the MDEQ approved septic sites located close to US Hwy 191, they are clearly located as far away as possible from the river. Having read and noted questions about the proposed EIS, I have the following comments and concerns. By the way, the home shown on the cover of the EIS is my home on Tract One!

1. According to the EIS, the section of West Gallatin River in the proposed EIS from milepost 32 (YNP) to milepost 68.2 (Spanish Creek) contains 85% of lands owned by the state or federal government and ONLY 15% in private ownership! This seems like a waste of money to me. Having helped draft the Gallatin Canyon/Big Sky Planning and Zoning Regulations and serving on the county commission-appointed Advisory Committee from 1996-2004, I vividly know the concerns of our fellow riverfront property owners in this narrow canyon corridor. The Gallatin Canyon/Big Sky P&Z district runs from milepost 41 to milepost 56. It is bordered to the south by the South

Gallatin P&Z district from milepost 41 to milepost 32 at the YNP line. To the north, from milepost 56 to the proposed end of the ORW at mile post 68.2, there is no current zoning.

* If the proposed ORW does NOT deny current county approved setbacks or MDEQ approved septic sites, I have no problem with this designation. However, if it in ANY way modifies or denies established county and state approved property rights of riverfront landowners in the proposed ORW area, I am adamantly opposed to this legislation. Again, we are talking about a very limited number of privately held lands in this ORW corridor – just 15% and most have already been improved. From milepost 32 to milepost 41 figure 3% unimproved land, from milepost 41 to milepost 56 5% unimproved, and from milepost 56 to 68.2 7% unimproved land. Most of these properties have MDEQ approvals.

2. I am opposed to this ORW proposal if it denies any current water rights or drilling of wells on private property.
3. I am opposed to the ORW proposal if it will delay, deny easement, or in any other way impact the MDTs and the federal government's ability to improve U.S. Hwy 191.
4. If in ANY way, the ORW proposal "takes away" current private property rights, or county, state and federally approved property rights, I oppose the designation.
5. As a 30-year resident of the Big Sky/Gallatin Canyon area, I view this proposed ORW designation as arbitrary and capricious for not including the downstream waters of the East and West Gallatin River to the confluence at Three Forks. I feel that we who live in the proposed ORW corridor have been unfairly targeted by this wasteful, knee-jerk proposed designation. Why are we being targeted? How about all of the subdivisions at Four Corners? There are far more privately held lands downstream of Spanish Creek than there are privately held lands upstream. This legislation misrepresents any serious concern for the entire Gallatin River watershed. Protection of the Gallatin River watershed needs to include the headwaters in YNP to its confluence in Three Forks. The majority of runoff agricultural and septic pollution is clearly more intense downstream of the proposed ORW designation. To protect the Gallatin River, you need to protect all of the river.

Please feel free to contact me with any questions you might have.

Respectfully,
Kevin Kelleher
Lazy Shamrock K
54725 Gallatin Road
Gallatin Canyon, MT 59730
406-995-4386 home
406-580-4386 cell phone



Hallsten, Greg

From: David and Julie Kirkland [djirkland@littleappletech.com]
Sent: Saturday, October 21, 2006 8:29 AM
To: Hallsten, Greg
Subject: ORW status for the Gallatin

Conservation +

Hello Greg,

We are letting you know we feel it is very important for the Gallatin to be protected with the ORW status. This watershed is too special to be degraded by unbridled future development. We believe we need to prevent that from happening. The small increase in development costs is a worthy investment to protect the river. We love it and use it as a recreational resource, but it is also a huge economic resource for the state, and shouldn't be endangered. Please do everything possible to hasten this designation. Thank you very much.

S, WQ

Hallsten, Greg

From: Faye Kommers [fkommers@yahoo.com]
Sent: Tuesday, October 24, 2006 11:09 AM
To: Hallsten, Greg
Subject: Gallatin River

Dear Mr. Hallsten,

As a native Montanan born and raised in Bozeman, I would like to express my support of designating the Gallatin River an Outstanding Resource Water.

Based on the DEIS, if it means that there must be some restrictions placed on new development in the hydraulically connected areas of the designated stretch so be it. And the fact that it would simply be a slight cost for alternative septic systems just doesn't seem all that restrictive. We can't NOT have some sort of restrictions placed on development in areas like Bozeman and Big Sky.

Lake Tahoe is an area with many more people than here and much more development. The Lake has been designated an ORW and development certainly hasn't halted there. It is just done in a more sensitive way now. We need to start thinking like that too.

I want my kids to be able to experience the beauty and ecologic health that the Gallatin River currently provides our generation.

Thanks!

Faye Kommers
316 W. Lamme
Bozeman, MT 59715

Stay in the know. Pulse on the new Yahoo.com. [Check it out.](#)

L, WQ, Leanne

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C...
S...

March 7, 2006

Richard H. Opper, Director
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

Subject: Outstanding Resource Water Classification for the Gallatin River

Dear Richard,

Thank you for allowing the Montana Department of Transportation (MDT) comment on the Gallatin Outstanding Resource Water (ORW) classification environmental review. I had my staff review the information and the proposed scoping report. Our comments are attached.

Sincerely,

Jim Lynch
Director

attachment

copies: Loran Frazier, Chief Engineer
Sandra Strachl, Rail, Transit and Planning Administrator

Montana Department of Transportation



Outstanding Resource Water Classification for the Gallatin River

The report indicates that the scope may include tributaries of the Gallatin River. If this occurs, the impacts to the designation could include MT 64, the road to Big Sky, in addition to US 191. The following are MDT's comments that may pertain to both of these highways.

- Received
after
closing
scoping period*
- We note that a comment was received during scoping requesting that the EIS define impacts from the ORW designation on the construction and maintenance of roads, especially US 191. As the scoping report does not appear to dispose of this comment please be aware that U.S. 191 is a National Highway System route designated by Congress and the ability of the MDT to maintain and operate this facility for the traveling public should not be impeded by ORW designation. Consequently, the EIS should disclose potential costs or other impacts there may be related to the construction and maintenance of State owned roads including US 191 and MT 64.
 - Maintenance and operations may include improvements, especially those related to safety, which as you know is a high level of concern for the residents in the Canyon and Big Sky.
 - Any highway improvements undertaken by MDT would necessarily require environmental review including considerations related to water quality.
 - Also, MDT follows best management road maintenance practices in the proximity of water bodies. These practices are designed to minimize or eliminate material dispersion into open waters. This level of environmental commitment should be recognized in the EIS.
 - Does DEQ have a definition for point source and non-point-source, as they will be used in this area? Specifically, the question relates to whether the drainage ditches adjacent to the roadways that then discharge into the river or its tributaries are considered a point source or a non-point-source. Presently, discharges from drainage ditches are considered to be non-point-source. MDT believes that this is an appropriate definition used within the context of permits and other ecological planning and should also be used within the EIS.
 - Regarding the use of US 191 for commercial truck movements, the environmental analysis should recognize the June 1992 environmental assessment (EA) performed by Yellowstone Park relative to commercial truck movements within the Park. The record of decision for this document concluded that commercial traffic could continue to use US 191 through Yellowstone Park with the exception of hazardous

material shipments. MDT consistently enforces this constraint. The ban on hazardous material movements within the park has eliminated many intra-state and all interstate hazardous material movements within the Gallatin Canyon.

- Also, regarding commercial truck movements in the Canyon, since 1995 MDT has fully staffed the Four-Corners weigh scale resulting in manned service on average of 16 hours a day, seven days a week. This staffing level has improved the level of safety compliance for all commercial vehicles in the US 191 corridor.
- ORW classification for the Gallatin River and its tributaries should not prevent MDT from upgrading the roadways. As already mentioned, any improvements will require full environmental review and compliance to permit conditions and mitigations identified in the environmental review documents. Because any environmental review for road improvements will necessarily be comprehensive, the ORW should not preclude the ability of the MDT to make such improvements.
- In addition, the EIS should recognize the natural geologic instability of the hillsides in parts of the study area and that catastrophic landslides may occur in this region. In the case of a catastrophic slide involving a state highway, under some circumstances, for the safety of the traveling public, the only feasible and prudent option may be some short-term impact to the waterways. Will this designation prevent any new impacts to the river, even if the safety of the traveling public is involved? This should be disclosed in the EIS.
- When DEQ is looking at the no-action alternative and any action alternative we recommend the increases to traffic and changes to the infrastructure be considered on all alternatives. We want to point out that with the growth in the area, the traffic volumes are increasing and will continue to do so. MDT does not want the safety of the traveling public to be compromised with any alternative.
- In the scoping document, under Effect of Upstream Water Usage or Diversion, there is a reference to "connected actions". We recommend that this term be defined.
- Concerning the comment letter to MDT's Gallatin Canyon Slope Flattening and Widening Project. We could like to add clarification. The document that is referenced in the letter "MDT Design Considerations for Permanent Erosion Control Features to Reduce Sediment Transport - August 2005" is a draft out for comment. We are willing to look at any project early in design to determine if measures are necessary to prevent further impairment to impaired streams. The concern is we must determine if the erosion control features are viable and if we can get the required right-of-way for the feature. Within Gallatin Canyon, the constraints of the canyon's geography may severely limit options for reduction of sediment transport.

Legal?

+ vote WQ

Leanne Roulson

From: J. Martin [jlfmart@hotmail.com]
Sent: Friday, October 27, 2006 9:58 AM
To: Hallsten, Greg
Subject: Gallatin River

WQ

Dear Mr. Hallsten,
I support Outstanding Resource Water designation for the Gallatin River. I live downstream of the proposed area, so I'd benefit from protected good water quality. I also think it makes sense to protect clean water that's the reason people fish, float, hike, and choose to live in our area. I also treasure the wildlife that lives in the water and travels the river corridor, and I think clean water will help sustain them. I think we need the proposed protections to safeguard the river in the face of much development pressure. If it costs people more to live here, it's still cheaper (and more possible!) to maintain clean water than to try to clean it up later.

Thank you,
Jenny Martin
1003 Zoot Way
Bozeman, MT 59718-8169

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FISH

RECEIVED

Mr Greg Halsten
MT. Dept. DEQ

OCT 25 2006

DEQ
DIRECTOR'S OFFICERe: ORW designation
Gallatin River
Yellowstone Nat Park
To Spanish Cr.

Sir,

I am very much in favor of the above designation of the Gallatin River. My family and I have fished, hiked and canoed the Gallatin River for 36 years. We have witnessed the steady degradation of this river through dewatering, "non-point" pollution, whirling disease, and almost yearly drought conditions. The Canyon sections of the Gallatin River show decreased populations of stone flies (pollution sensitive) and increased population of midges (pollution tolerant). I am sure that chemical analyses of the river for nitrogen and phosphorus would show steady increases over the years. These studies have already been done by MSU since before the invasion by Big Sky Resorts.

The lower river (Below Gallatin Gateway) is already heavily impacted by agriculture (irrigation, sedimentation, fertilizers, pesticides) and will not change in the foreseeable future.

This river is in serious trouble. It deserves protection from further degradation because it is still a beautiful stream and, along with the Yellowstone, is not dammed up. The Gallatin River is of significant economic and scenic value to the state of Montana. It deserves protection under the Outstanding Resource Water designation.

CC. Shawn Regnerus
Water Program Coordinator
321 E. Main St, Suite 418
Bozeman, MT 59715Sincerely,
John S. Meese



NICKLIN
Earth & Water



28

670 Ferguson, Suite 1
Bozeman, Montana 59718
Phone: (406) 582-0413
Facsimile: (406) 582-0449

WQ
Fish

RECEIVED

OCT 27 2006

DEQ
DIRECTOR'S OFFICE

October 26, 2006

Mr. Greg Hallsten
Montana Department of Environmental Quality
Directors Office, P.O. Box 200901
Helena, MT 59620-0901

Re: Comments of Nicklin Earth & Water, Inc. - Draft Environmental Impact Statement (EIS) for the Gallatin River Outstanding Resource Water Designation

Dear Mr. Hallsten:

Please find our technical review comments on the report "Draft Environmental Impact Statement (EIS) for the Gallatin River Outstanding Resource Water Designation" prepared for the Montana Department of Environmental Quality.

For your information, we were retained by Mr. James Taylor of Bostwick Properties, Inc. of 1045 Reeves Road E., Bozeman, Montana to conduct this technical review.

If you have any questions, please feel free to give me a call at 406-582-0413.

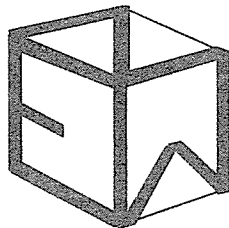
Sincerely,

Michael E. Nicklin, PhD, PE

cc: Mr. James Taylor, Bostwick Properties, Inc.
Mr. Ed Matos, Bridger Engineers

**Technical Review Comments
Draft Environmental Impact Statement
for the
Gallatin River Outstanding Resource
Water Designation**

prepared by



NICKLIN

EARTH & WATER, INC.

for

Bostwick Properties, Inc.

October, 2006

**Review Comments of Nicklin Earth & Water, Inc.
Draft Environmental Impact Statement for the Gallatin River
Outstanding Resources Water Designation**

I, Michael E. Nicklin, PhD, PE, am a Montana Registered Professional Engineer with more than 30 years of professional experience in civil engineering, hydrogeology, water resources and environmental sciences. I have Bachelor of Science degrees in both geology and civil engineering; a Master's degree in Water Resources; and a PhD in Civil Engineering. Both of my advanced degrees emphasize surface water and ground-water hydraulics.

I have conducted numerous modeling efforts involving surface water and ground water. One of my specialties is surface water and ground-water interaction.

I have been involved in addressing water quality issues in the Big Sky vicinity for about seven years. That work has included collecting surface water quality data involving sediment and nutrients. I have also reviewed several of the documents cited in the EIS including Baldwin, Bahls, etc. Nicklin Earth & Water, Inc. (NE&W) also conducted the first narrative standard analysis for nutrients in the State of Montana. In fact, NE&W has conducted numerous narrative standard analyses in the Big Sky vicinity. As such, I have established a credible record of understanding water quality issues in the Big Sky area.

I have also provided expert witness testimony in several legal cases focusing on environmental issues, ground water and surface water/ground-water interaction. In 1995, I formed Nicklin Earth & Water, Inc., a firm which specializes in solving complex water resource and environmental problems. The resume that is attached in Exhibit 5 provides representative projects that I have completed. It also lists professional papers and presentations.

I have reviewed the Draft Environmental Impact Statement for the Gallatin River Outstanding Resource Water Designation (September 8, 2006) [Draft EIS] developed by Garcia and Associates in association with HydroSolutions, Inc., and Ken Wallace Consulting.

The following summarizes my review of this work.

General Comments of the Draft EIS

The following are general comments on issues defined in the ORW EIS:

Comment 1.

Based upon my assessment of the ORW EIS, I do not believe that sufficient evaluations were conducted to support the conclusions and alternatives that were set forth in the draft EIS. It is my impression that this may be in large part owed to the

short time frame used for completing the EIS. The Gallatin River system and its tributaries are bounded by a highly complex geologic and hydrogeologic system. There is also a large database that has evolved through water quality data collection, especially in the West Fork of the Gallatin River drainage. Hence, a substantial amount of data analysis, ground truthing, and potential data collection are necessary for an EIS to be completed properly.

In the EISs that I have reviewed, nearly all provide a thorough conceptual understanding of the system as part of the process. The document does not provide a thorough synopsis of the data that are available. There is no evidence that additional data were collected.

The ultimate outcome of this EIS led to more of a "generic" assessment which was used to support the alternatives that were presented. My experience in conducting numerous field investigations in the Big Sky area does not conform with many of the conceptualizations and conclusions presented in the draft EIS. I will provide several examples which illustrate the types of problems that evolved with this generic assessment.

Before the EIS process is completed, I would recommend that more study be done, including conducting a more thorough evaluation of the existing data, and presenting more of that information in a context that the public can digest without having to search through 17 pages of references that are attached at the end of the document. For instance, Big Sky Sewer and Water District has collected water quality data for about a decade. That information is not evaluated for this draft EIS.

Comment 2:

In Table E-1 of the Executive Summary the following is stated for Alternative 2 (first row and fifth column):

"Change from recently documented trend degrading water quality to stabilized level."

NE&W is very familiar with the analytical data that have been collected in the Big Sky area. I have evaluated both spatial and temporal data for nutrient levels in the Gallatin River and in the West Fork system. I have never been able to detect any statistically significant discernable time trends in nutrient concentrations from data that have been collected from over a decade in this area. In fact, I doubt that the data can be used to support such trends if all variables are considered in any trend analysis. It has been my experience that some temporal changes in nutrient concentrations are observed, but many are simply correlated to the magnitude of stream-flow rather than any long-term trends.

Comment 3:

According to the draft EIS, the following statement is made in reference to Figure 4.3-6:

"The Blue Water Task Force sampled and compiled water quality data on the Gallatin River and its tributaries from May 2000 to February 2004."

Then it states the following:

"This higher level of nutrients in the West Fork of the Gallatin River (which drains Big Sky) suggests that, even with much of the West Fork valley served by a municipal sewer system, the intensity of development such as seen in Big Sky has lead to measurable nutrient increases in principal receiving streams."

Careful scrutiny of this plot reveals that this last statement is false for the following reasons:

- There is no statistically discernable trend for increasing nitrate concentrations.
- The last data point (for West Fork and for Gallatin River upgradient and downgradient) was collected in early 2004. The reason that this last sampling event shows higher concentrations is simply because the collection date occurred during a period of extremely low flows in the Gallatin River. In effect, concentrations of nutrients are normally higher during low flow periods because dilution is less.
- It cannot be credibly argued that the sample collected at the up-gradient location in the Gallatin River (upgradient of the West Fork), which incidentally also showed relatively higher nitrate concentrations, is related to development in Big Sky. Most of the development in the Big Sky area has actually occurred in the West Fork drainage, not to the south of Big Sky.

Even if one were to ignore the relevance of discharge magnitude, it is not good science to rely on one sampling event (the last sampling point) to draw a conclusion that there are "measurable nutrient increases." A more objective and realistic statement would be to conclude "there is no evidence of measurable nutrient increases" over this period of record.

When all variables (such as magnitude of flow) are considered, there is no evidence of increasing nutrient concentrations with time in the Gallatin River either above or below its confluence with the West Fork from the year 2000 through 2004.

In summary, the plot given in Figure 4.3-6 should not be used to serve as a foundation for supporting the restrictions that are inherent in the action alternatives defined in the ORW.

Comment 4:

NE&W notes that on page 101 of the draft EIS cites evaluations of Bollman, who compared benthic macroinvertebrate supporting conditions from 2002, 2003 and 2005 along the main stem of the Gallatin River. According to Bollman, there was no impairment in 2002 through 2003 at any of these three sites (including at Taylor Fork, Dudley Creek, and below Porcupine Creek). Yet, in 2005 there was slight impairment at all three sites. It is obvious that the slight impairment at Taylor Fork is not related to nutrients associated with development since there is virtually no development at this location. Furthermore, even Bollman describes that the slight impairment conditions at all three sites may be related to drought, low flow, and water temperatures.

Again, as in the case described in Comment 3, there is no conclusive evidence that nutrient levels are currently an issue in the main stem of the Gallatin River on the basis of work conducted by Bollman.

Comment 5:

Please provide the information, data, citations, and methods that were used to confirm (without the qualifiers "may be", etc.) that there is a scientifically supportable "documented trend" toward degradation and/or increase in nutrients that is based upon data as opposed to inference. Furthermore, given the impetus of the solutions in the draft EIS, please confirm that there are any "trends" that can be attributed solely to nutrients such as nitrates and phosphorous.

Comment 6:

The EIS does not adequately explain why the Total Maximum Daily Load (TMDL) process established as part of the Clean Water Act is not sufficient to accomplish the objectives of an ORW assessment.

Accordingly, the enabling legislation regarding the ORW designation requires that the BER make certain written finding to designate a river as an ORW. More specifically, MCA 75-5-301 (3) (d) requires a finding that:

"specifically explain why other available processes, including the requirements of 75-5-303, will not achieve the necessary protection."

See Exhibit 1.

The Draft EIS also fails to report that the main stem of the Gallatin River from Spanish Creek to the Yellowstone National Park boundary has been assessed under the TMDL program and found to fully support all uses (2006 Draft 305(b))/(303d) Water Quality Report).

Instead of reporting the obvious conclusion about the TMDL status of the main stem of the Gallatin, the Draft EIS reports that six tributaries of the Gallatin are listed as impaired. Of the six, Storm Castle Creek seems to be listed in error. Of the other five, only the West Fork and the South Fork are listed as impaired due to nutrients with a probable cause of subsurface discharge of treated wastewater (septic tanks).

Therefore, it seems obvious that the best way to protect the Gallatin River could be accomplished by simply completing the TMDL process for these tributaries as opposed to the preferred action proposed in the draft EIS.

Comment 7:

Rather than complete the TMDL process, the following is the approach taken in the Draft EIS. It addresses the following nutrients associated with wastewater systems within a designated "footprint":

- 1) Nitrates as Nitrogen
- 2) Phosphorous

The level of significance for each of these parameters as defined by the draft EIS is based only on the mass emitted from wastewater systems in this footprint that would ultimately yield trigger level concentrations for the 7Q10 flow. It is noteworthy that trigger level concentrations were initially established by Montana DEQ solely on the basis of laboratory detection limits or the lowest level of concentration that could be detected in the laboratory.

In the event total loadings yield an increase in concentrations exceeding this trigger level, no further loadings would be allowed in the "footprint" adjacent to the Gallatin River and its tributaries. Based upon the EIS, it is assumed that the triggering mass will occur when a total 4,008 pounds of nitrate or 401 pounds of phosphorous per year are dispensed annually within the footprint as wastewater (per Appendix A of draft EIS). The critical parameter is assumed to be phosphorous.

According to Appendix A of the draft EIS, it is stated that there are currently 1,846 acres of undeveloped land in the footprint. How many acres of developed land are in the footprint? How many single family equivalents (SFE) are currently established in this footprint? Given that the TMDL analysis has demonstrated that the Gallatin River proposed for the ORW is currently a full support system for all uses, was any comparison made between the number of existing SFEs in the footprint versus the 67

SFE proposed as the maximum allowed in the draft EIS to determine if the restriction is rational?

Is there any scientifically credible evidence that these existing SFEs that are in the footprint (and outside the footprint) have emitted nutrient masses that are impacting the quality to cause "increasing trends" in the main stem of the Gallatin River?

If so, please provide the data and calculations that were made for this comparison.

Comment 8:

The draft EIS assumes that all units within the designated footprint are hydraulically connected to the Gallatin River. The footprint was defined on the basis of a vulnerability assessment conducted by HydroSolutions, Inc.

The rationale described in Appendix F of the draft EIS states that use of a footprint is logical as there is less opportunity for dilution. NE&W notes that this directly contradicts the DEQ's current approach for narrative standard evaluations in the Big Sky area. DEQ assumes that all effluent will ultimately reach the nearest surface water stream unless there is site specific evidence to the contrary. In effect, DEQ does not allow consideration of dilution. It seems counterintuitive that on the one hand, there is no dilution in the footprint, yet, on the other hand, all nutrients outside the footprint are attenuated.

Ultimately, it is assumed that all nutrient mass emanating from wastewater systems within the designated footprint will reach the Gallatin River. It is assumed that none of the compounds will be attenuated either in the vadose zone or saturated zone. Again, on the other hand, if a wastewater system is located just outside the footprint, the draft EIS assumes that no nutrient mass will reach the Gallatin River.

We believe that using a footprint to artificially designate and draw a boundary whereby all nutrients are either contributed, or not contributed, is highly subjective and unrealistic.

Comment 9:

That draft EIS does not account for non-point sources of nutrients including fertilizers from lawns, golf courses, nor does it consider livestock (e.g., horse corrals adjacent to Gallatin River), etc.

Nutrient levels in the Gallatin River main stem are very low. Consider for example Figure 4.3-6. The nitrate concentrations both above and down-gradient of the West Fork typically are less than 0.1 mg/L. Refer to Figure 4.3-6 of the draft EIS. The concentrations for orthophosphate tend to currently average less than the detection

limit of 0.01 mg/L (page 57 of the draft EIS). How can it be assured or determined as to just what is the relative contribution of septic systems to these observations?

The concentrations remain low in spite of the variety of point and non-point sources, including natural sources, timber harvesting, fertilizers from agriculture, lawns, golf courses, livestock (e.g., many instances of horse corrals immediately adjacent to the Gallatin River), as well as wastewater systems. For example, a U.S. Geological Survey study in the Gallatin Valley drew a conclusion that fertilizers and soil organic nitrogen probably contribute most of the nitrate to the ground water in the Gallatin County Local Water Quality Control District (Kendy, 2001). In effect, such non-point sources are likely a primary factor for explaining the low-level nutrient concentrations of the main stem of the Gallatin River.

Given all the variables that may contribute, and given that the study implies that all nutrients within the footprint will directly enter the Gallatin River, why do the concentrations remain so low? Where are the high levels of orthophosphate? My evaluations of existing data that have been collected show that most sampling data for phosphorous concentrations are either near or at the non-detect levels in the main stem of the Gallatin River. Given the suppositions of direct hydraulic connection defined in the EIS, where is the cause and effect in the actual observation data?

Did the Blue Water Task Force, which collected the data cited in Figure 4.3-6, collect orthophosphate data? If so, given the conclusion that phosphorous is the "limiting factor," what were the orthophosphate levels that were observed? If so, shouldn't that data have been presented in the draft EIS report as well?

Comment 10:

Effectually, all burden for the preferred option of DEQ in the draft EIS is placed on properties defined in the designated "footprint."

Based upon the way the draft EIS is written, there is no burden placed on other potential source factors if they just happen to be outside the footprint. HydroSolutions states that the footprint was established on the basis of a "subjective rating method." NE&W agrees that the method is subjective, but believes it is more appropriate to describe it as "highly subjective". In fact, I believe it is too subjective to yield meaningful results owing to the myriad of factors described in the comments above.

During the public hearing held on October 25, 2006, staff presenting the findings of the draft EIS used the term hydrologic connection as opposed to the term hydraulic connection that was presented in Appendix F of the EIS. Hydrologic connection should not be confused with hydraulic connection. There was also an inference that the footprint may not be fixed for purposes of connectivity evaluation. This could imply that areas outside the footprint could be drawn into and included as part of the SFE

constraints that have been defined. Considering the extreme hydrogeologic complexities that exist along the reach of the Gallatin River, especially in the vicinity of Big Sky, it will be a very difficult and probably an unrealistic undertaking to prove or disprove if hydrologic/hydraulic connections exist at various locations at/near, or even remote from, the footprint.

Comment 11:

The EIS appears to have omitted one of the key sources contributing nutrients to the West Fork of Gallatin River for it did not discuss the significance of historic leakage from the waste-water treatment ponds at Meadow Village and the historic leakage of sewer piping in this drainage. A substantial portion of the slightly elevated nutrient levels in the middle and lower portions of West Fork are a result of this leakage.

Note that both leakage factors were remedied by 1998. However, residual nutrients will continue to be transported through the ground water and into lower portions of the West Fork Gallatin River until they attenuate with time. I could not find a single citation of this historic pond leakage in any section of the EIS. This could serve as a significant explanation of the algal and diatom assemblage differences described by Bahls (2001) in the EIS when comparing up-gradient versus down-gradient portions of the Gallatin River at the West Fork.

Wouldn't it have been logical to discuss this as an explanation for some of the observations that are described by Bahls? Wouldn't it have been appropriate to discuss the remedies that have been completed as part of the draft EIS?

Comment 12:

This comment addresses the methods employed in Appendix F "Rationale and Explanation for Final Aquifer Vulnerability Footprint Map, Gallatin Outstanding Resource Water EIS" by Hydrosolutions (June 14, 2006) for DEQ.

- A. According to this memorandum: 'Groundwater vulnerability to contamination was defined by the National Research Council (Focazio et al 2000) as "the tendency or likelihood for contaminants to reach a specified position in the groundwater system after introduction at some location above the uppermost aquifer."'

Three of the more dominant geologic formations present along reaches of the West Fork of the Gallatin River include the Muddy Sandstone, Thermopolis Formation, and Kootenai Formation. In the vicinity of Big Sky, two of the formations (the Muddy Sandstone and Thermopolis Formation) have been lumped in the EIS for geologic mapping purposes. Shales tend to dominate the Thermopolis. The Kootenai contains about 30 to 40 feet of limestones, which are in turn underlain by red-beds consisting predominately of shales, which in turn are underlain by a salt-

and-pepper medium to coarse-grained sandstone. Therefore, some portions of the Kootenai readily transport water and other portions do not.

The Muddy Sandstone possesses permeability that is substantially greater than Thermopolis shales. The permeability of the Thermopolis is low to extremely low. I note that Hydrosolutions (and Baldwin) classified the Thermopolis shale as a high permeability unit. This classification is unrealistic. It is not a high permeability unit. It may be that these entities were actually focusing on the Muddy Sandstone which could be considered a "higher" permeability unit (although it is highly unlikely that K values on the order of 1,136 feet/day are representative of the Muddy Sandstone except in situations where fracture flow is involved).

In particular, based upon review of the documentation in the draft EIS, it appears that the quantitative estimate of the hydraulic conductivity for the "high velocity" sedimentary units is based on one test (Kootenai Formation at Rimrock Subdivision). I believe that it is inappropriate to extrapolate interpretations from one site specific test in fractured strata (e.g., Rimrock subdivision test) and then use this value elsewhere without consideration of other data that exist in this watershed. This is even more problematic if such an extrapolation is made to what are clearly low permeability strata, such as shales of the Thermopolis. I am certain that a hydraulic conductivity of 1,136 feet/day is not representative of the Thermopolis shales. See Exhibit 4 which is attached for a detailed example of the water bearing characteristics of the Thermopolis.

We suggest that the vulnerability assessment, which is discussed further below, be re-evaluated utilizing more data, particularly for areas where the Thermopolis Formation is involved.

- B. This same memorandum states that both "subjective rating methods" and "process-based methods" were employed. For the subjective method, they defined categories of vulnerability as the following:

High
Medium
Low

The initial basis for this subjective method is work from Baldwin.

The hydrogeologic criteria that are employed to determine the footprint of hydraulic connectivity are very general for a set of highly complex geologic conditions. Yet, the net result of using what are clearly highly subjective criteria is a footprint wherein exacting limitations for nutrient loadings are defined.

I believe that the hydraulic connectivity and so-called vulnerability assumptions could have some merit if it is limited to areas where a reasonable database has actually been obtained. However, based upon my review of the Appendix F of the EIS, and as described above, I do not believe that it is appropriate to generally apply either the Baldwin criteria or the Hydrosolutions criteria for vulnerability assessment.

In summary, NE&W does not believe that the draft EIS provides a realistic assessment of hydraulic conductivity for the connectivity determination for the sedimentary units in the vicinity of Big Sky.

Comment 13:

It is odd that the hydraulic connectivity assessment for all intents and yields a footprint that stops at or near the Gallatin County-Madison County boundary. Based upon my experience in this watershed, the geologic units that are just west of this county line are just as hydraulically connected as those to the east of the county line.

Is it logical to infer that all contributions will occur on the Gallatin County side and that none will occur on the Madison County side?

Comment 14:

Site Specific Evaluation of the "Footprint" versus the Data - Township 7S Range 4E Sections 5 and 6.

In order to test the validity of the methods that were employed in developing the footprint, NE&W compared the proposed footprint with a site specific example discussed below.

Substantial portions of the Lazy J South subdivision are defined to be in the footprint of the ORW (see Exhibits 2 and 3 which are attached).

The key geologic formations described in Table F-1 that are relevant to Lazy J South vicinity are the following:

- Alluvium (Qa);
- Terrace Gravels (Qg);
- Colluvium (Qc);
- Landslide (Qls);
- Tertiary Volcanics (Tv, undifferentiated); and
- Sub-cropping Mowry Shale; Muddy Sandstone and Thermopolis Shale.

Exhibit 4 summarizes the site specific conditions involving these geologic units.

In effect, my assessment revealed that it is reasonable to assume that the alluvium is hydraulically connected to the Gallatin River. The Gallatin River alluvium is unconfined in the project area. It is also noted that the footprint included in the draft EIS included Terrace gravels and colluvium which are unsaturated (dry) in the vicinity of Lazy J South. These same deposits are well above the 40 feet criterium defined in Table F-4 of Appendix F of the EIS. Hence, for geologic reasons and for elevation reasons, I believe that the footprint established by in the draft EIS does not match the criteria defined in Table F-4.

Michener Creek flows through the project. Although this creek is mapped to be bounded by alluvium by Kellogg, it is my interpretation that it flows on a landslide deposit or debris flow through the project vicinity. It is effectively hydraulically isolated from the Quaternary terrace and colluvial deposits as is demonstrated

Furthermore I note that a deep well penetrated through a thick section of the Muddy Sandstone and Thermopolis Formation at Lazy J South. Virtually no water was encountered until a significant source of water was found at a depth of about 1219 to 1250 feet below ground surface. Hence, these sedimentary units exhibited extremely low permeabilities as opposed to a permeability of 1,136 ft/day that was assigned in the draft EIS. Even in the zone where the water was tapped in the lower Thermopolis (likely fractured zone), pumping tests revealed a hydraulic conductivity of about 1 foot per day.

In conclusion, the hydraulic conductivity conditions assumed by Hydrosolutions used to create the footprint do not match the site conditions at this location. Based upon my work in the Big Sky area, I do not believe that this case is unique. Hence, I believe that this calls into question the viability of the hydrologic connectivity footprint that has been established in the draft EIS.

In the event that a footprint is going to be established as part of the ORW, it is paramount that flexibility be incorporated into the process to allow site-specific conditions to supercede hypothesized conditions.

In view of the above example, and also in light of my other experiences in the Big Sky area and with previous experiences involving the Montana Department of Environmental Quality, I have the following comments, concerns and questions for your consideration

- Was ground-"truthing" or collection of field data considered or employed in the EIS evaluation?
- If not, wouldn't that have been an appropriate component of the EIS process, especially in view of the profound implications the subjective boundaries will

- have on those who just happen to own property in the footprint?
• Wouldn't the DEQ require the same if another entity was performing an EIS?

As I noted previously, NE&W applied the assumptions of the ORW that had been used to create a footprint that dissected Section 5, Township 7S, Range 4E. It was my determination that the footprint that had been established was highly inconsistent with the site conditions.

We believe that additional ground "truthing" and additional examination of the available database, including the existing water quality data, are necessary for this EIS process to be meaningful.

Final Comments/Questions

Final Comment 1:

Based upon my review of the information and evaluation that was conducted in the draft EIS, I do not believe that this document has satisfactorily laid the foundation for establishing a footprint for the following reasons:

- It has inferred rather than demonstrated there has been a "trend" for an increase in nutrient concentrations in the main-stem of the Gallatin River.
- It has used highly subjective methods which do not match site specific conditions for defining the footprint of hydraulic connectivity.

Final Comment 2:

The EIS does not explain why the TMDL process was insufficient in the first place for accomplishing the objectives of an ORW. In particular, it is unclear to us how the designation of the so-called "footprint" and limitations defined in the draft EIS will yield better protection than if the TMDL process for the tributaries to the Gallatin been followed. Again, MCA specifically requires a specific explanation as to why other processes will not achieve the necessary protection. Another advantage of the TMDL process is that data are actually collected for evaluation purposes.

We do not believe that establishing a footprint is appropriate for the ORW as I believe that similar protections can be provided by simply completing the TMDL process for the Gallatin River tributaries.

Final Comment 3:

Based upon my experience in the Big Sky area, I have seen no statistically discernable evidence of the "documented trends" for changes in water quality that are described in the draft EIS. In effect, I believe that basing the EIS recommendations on "trends" that do not exist is highly questionable.

Final Comment 4:

If a footprint is established, I recommend that flexibility be incorporated so that site specific conditions supercede this footprint. In effect, if site specific conditions don't match the assumptions made in the EIS, then provisions should be made to alter this footprint to meet actual conditions.

Final Comment/Question 5:

It is obvious there will be many circumstances whereby site conditions do not match inferred conditions in the EIS. If such situations are proven, how will this count towards other development allowed in the footprint? Will the loading for the footprint remain fixed regardless of the site specific conditions?

Final Comment/Question 6:

How will such a footprint be ultimately defined? Will legal descriptions be made?

Final Comment 7:

Consideration should also be given to revising the vulnerability classifications that were made to ensure that they are more representative of actual geologic conditions (e.g., Thermopolis shale, etc.). This can only be accomplished by conducting a more thorough evaluation of the existing data that are available. It may also be appropriate to conduct additional investigations before this process is completed.

Final Comment 8:

In a recent decision by the Montana Supreme Court, the court opined that all ground water is directly connected to surface water. Will this decision have any impact on the ORW now or in the future? Can the boundaries be changed/reduced/expanded outside the context of a public hearing/public comment?

Based upon my experience in Big Sky, proving that a hydraulic connection or lack of hydraulic connection exists will be a burdensome and time-consuming problem for both land-owners and the DEQ because of the highly complex geologic systems that are present.

Review Comments
Draft EIS - ORW

Page 14 of 14

Final Comment 9:

In summary, NE&W believes that it is important to protect the Gallatin River and its tributaries. However, I believe that it can be better done by using the TMDL process which accounts for all the variables that may affect the water quality of this river.

Adapted from Natural-Color Aerial
Photos of Montana, 2005,
NRIS http://nris.mt.gov/nsdi/orthophotos/naip_2005.asp

Corrected Footprint Using
Elevation Criteria Table F-4
of EIS

Footprint Boundary
as shown in EIS

Not this
as shown
in EIS

Note that this is the correct
alignment of Gallatin River

Possible Landslide
Debris Chute?

Surveyed
Surface Water
Elevation 6010 feet

WELL DATA

WELL NO./GWC I.D.	DESCRIPTION	AVE SWL ELEV, FT
01	BEI MONITORING WELL #01 (DRAINFIELD WELL)	6046.28
02	CONCRETE BATCH PLANT DOMESTIC WELL	6046.72
03	133571 HAMMOND PROP. MONT DOMESTIC WELL	6027.70
04	133412 WESTLAND ENTERPRISES INC MW#227-008 3	6023.03
05	133410 WESTLAND ENTERPRISES INC MW#227-008 4	6034.63
06	215176 NORTH PIT WELL	6007.79
07	143231 BUCK'S T-4 DOMESTIC WELL	NONE
08	133411 WESTLAND ENTERPRISES INC MW#1	NONE
09	162778 ABC RENTAL DOMESTIC WELL	6015.43
10	BEI MONITORING WELL #2	6054.58
11	BEI	---
12	BEI	---
LJS-1	223891 BEI	6473
MWJS-1	222807 BEI	6089

WARNING
0 1/2" 1"
IF THIS BAR DOES
NOT MEASURE 1"
THEN DRAWING IS
NOT TO SCALE

CLIENT:
BOSTWICK PROPERTIES, INC.
1045 REEVES ROAD EAST, STE C
BOZEMAN, MT 59718
(406) 922-2000

CIVIL AND STRUCTURAL ENGINEERING
LAND SURVEYING
PROJECT MANAGEMENT
BEI
BRIDGER ENGINEERS, INC.
215 AVENUE D
BOZEMAN, MONTANA 59718
P (406) 592-0900
F (406) 592-1007

BOSTWICK PROPERTIES - SECTION 5
TRACTS 1, 2, & 3 OF COS 2450
SEC 5, T7S, R4E, PM, GALLATIN COUNTY
BIG SKY, MONTANA

DATE:
10.20.08

REVISION: DATE:

Δ
Δ
Δ
Δ

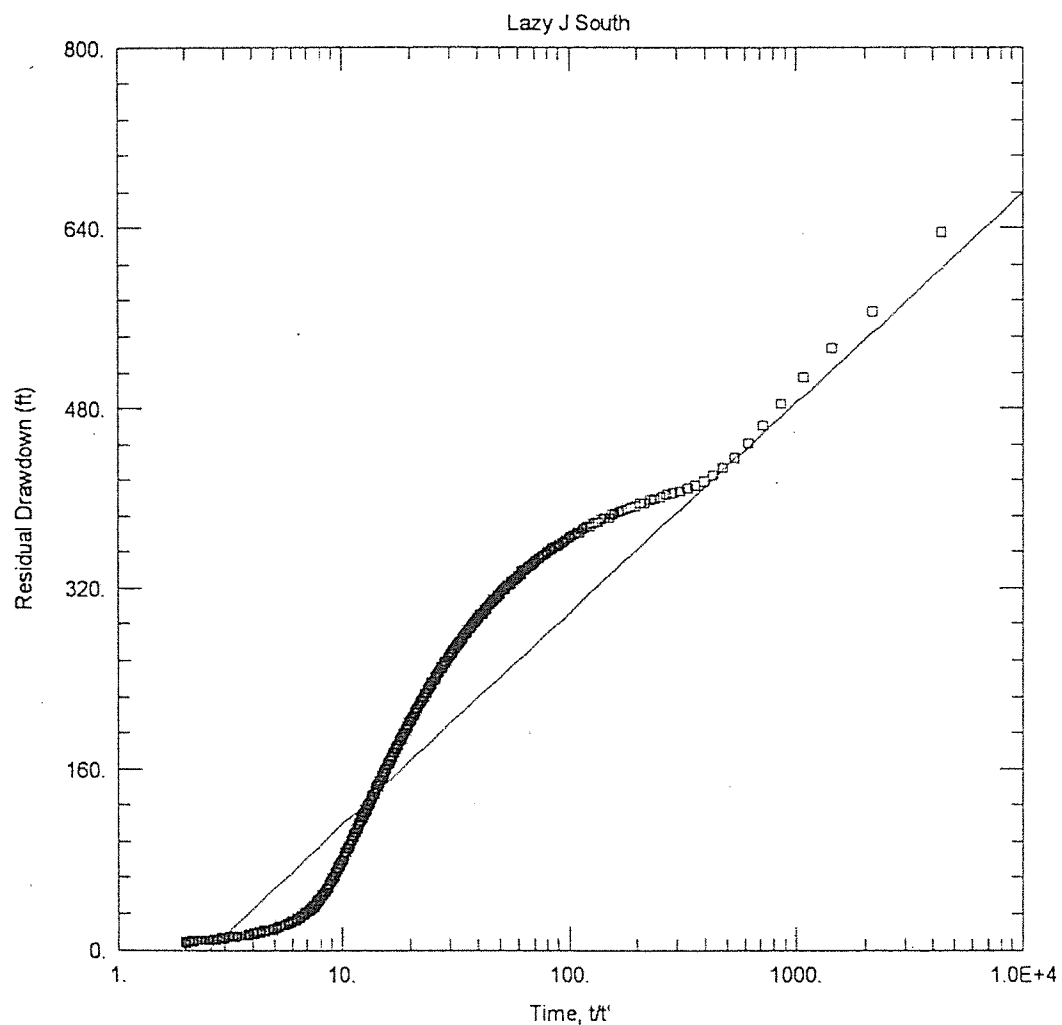
Sheet No.

Exhibit 2

Exhibit 4

Boring Logs - Deeper Wells

Demonstrating Low Permeability at Lazy J South
Muddy Sandstone and Thermopolis Shale



Obs. Wells

□ LJS-1

Aquifer Model

Confined

Solution

Theis (Recovery)

Parameters

$T = 34.52 \text{ ft}^2/\text{day}$

$S/S' = 2.564$

Date: December 14, 2005

File: c:\fig_03.dsf

Issued for Bridger Engineers



NICKLIN

EARTH & WATER, INC.

Transmissivity Theis Residual Drawdown
Pumping Test at Production Well
Lazy J South

Figure 3

MONTANA WELL LOG REPORT

Form No. 03 R2-04

Well ID# _____

This log reports the activities of a licensed Montana well driller and serves as the official record of work done within the borehole and casing and describes the amount of water encountered. **This form is to be completed by the driller and filed with MBMG within 60 days of completion of the work.** Acquiring Water Rights is the well owner's responsibility and is not accomplished by the filing of this report.

Well log information is stored in the Groundwater Information Center at the Montana Bureau of Mines and Geology (Butte) and water right information is stored in the Water Rights Bureau records (Helena).

For fields that are not applicable, enter NA. **Optional fields have a grayed background.** Record additional information in the REMARKS section.

1. WELL OWNER:

Name LAZY J WATER SYSTEMS
Mailing address 1045 REEVES ROAD EAST SUITE C
BOZEMAN MT. 59718

2. WELL LOCATION:

List ¼ from smallest to largest

SW ¼ NW ¼ SE ¼, Section 5
Township 7 N/S Range 4 E/W County GALLATIN
Lot _____ Tract/Blk _____ Subdivision Name _____
Well Address _____
GPS ☒ Yes ☐ No
Latitude N 45° 15.082 Longitude W 111° 15.647
Error as reported by GPS locator (± feet) 24
Horizontal datum ☐ NAD27 ☒ WGS84

3. PROPOSED USE:

☐ Domestic ☐ Stock ☐ Irrigation
☒ Public water supply ☐ Monitoring Well ☐ Other:

4. TYPE OF WORK:

☒ New well ☐ Deepen existing well ☐ Abandon existing well
Method: ☐ Cable ☒ Rotary ☐ Other:

5. WELL CONSTRUCTION DETAILS:

Borehole:
Dia. 13 3/4 in. from 0 ft. to 76 ft.
Dia. 12" in. from 76 ft. to 1191 ft.
Dia. 7 7/8" in. from 1191 ft. to 1278 ft.

Casing:

Steel: Wall thickness .250 ☐ Threaded ☒ Welded
Dia. 8 5/8 in. from +2 ft. to 1180 ft.
Dia. 6 5/8 in. from 1264 ft. to 1159 ft.
(1219)

Plastic: Pressure Rating N/A lbs. ☐ Threaded ☐ Welded
Dia. _____ in. from _____ ft. to _____ ft.

Perforations/Slotted Pipe:

Type of perforator used N/A
Size of perforations/slots _____ in. by _____ in.
_____ no. of perforations/slots from _____ ft. to _____ ft.
_____ no. of perforations/slots from _____ ft. to _____ ft.

Screens: ☒ Yes ☐ No

Material 304 S.S.
Dia. 6" Slot size .40 from 1259 ft. to 1219 ft.
Dia. _____ Slot size _____ from _____ ft. to _____ ft.

Gravel Packed: ☐ Yes ☒ No

Size of gravel _____
Gravel placed from _____ ft. to _____ ft.

Packer: ☒ Yes ☐ No

Type 6x8 K-Packer Depth(s) 1133

Grout: Material used CEMENT

Depth from 0 ft. to 1180 ft. OR ☐ Continuous feed

3. WELL TEST DATA:

A well test is required for all wells. (See details on well log report cover.)

☒ Static water level -353 ft. below top of casing or
☒ Closed-in artesian pressure 153 psi. (+353-ft)

How was test flow measured:

bucket/stopwatch weir, flume, flowmeter, etc _____

Yellowstone Controlled Groundwater Area - Water Temperature _____ °F

☐ AQUIFER TEST DATA FORM ATTACHED

Test - 1 hour minimum

Drawdown is the amount water level is lowered below static level.
All depth measurements shall be from the top of the well casing.
Time of recovery is hours/minutes since pumping stopped.

Air test*

_____ gpm with drill stem set at _____ ft. for _____ hours
Time of recovery _____ hrs/min. Recovery water level _____ ft.

OR Baller test*

_____ gpm with _____ ft. of drawdown after _____ hours
Time of recovery _____ hrs/min. Recovery water level _____ ft.

OR Pump test*

Depth pump set for test 545 ft.
181 gpm pump rate with 718 ft. of drawdown after 12 hrs pumping
Time of recovery 48 hrs/min. Recovery water level 353 ft.

OR Flowing Artesian*

_____ gpm for _____ hours
Flow controlled by 6" MULLEN VALVE

*During the well test the discharge rate shall be as uniform as possible. This rate may or may not be the sustainable yield of the well. Sustainable yield does not include the reservoir of the well casing.

7. WELL LOG:

Depth, Feet		Material:
From	To	color/rock and type/descriptor (example: blue/shale/hard, or brown/gravel/water, or brown/sand/heaving)
TOP	3	TOP SOIL
3	10	GRAVEL WITH FINE SAND AND CLAY
10	57	GRAVEL WITH FINE SAND AND CLAY.
		VERY DIRTY WITH STREAKS OF LITE BROWN CLAY.
57	74	SHALE HIGHLY FRACTURED WITH GRAVEL
74	100	SHALE WITH STREAKS OF GREY CLAY
100	130	DARK GREY SHALE WITH TRACES OF GREY CLAY.
130	195	BLACK SHALE
195	305	SHALE WITH STREAKS OF GRAY CLAY
305	325	GREY CLAY WITH STREAKS OF BLACK SHALE
325	345	BLACK SHALE WITH TRACES OF GREY CLAY
345	480	SHALE WITH STREAKS OF GREY CLAY
480	503	FRACTURED BLACK SHALE WITH LITE GREEN AND STREAKS OF GREY CLAY
503	507	HARD FRACTURED BLACK AND LITE SHALE
507	510	BLACK AND LITE GREEN SHALE, WITH

☐ ADDITIONAL SHEETS ATTACHED

8. DATE WELL COMPLETED: 9-30-05

9. REMARKS:

10. DRILLER/CONTRACTOR'S CERTIFICATION:

All work performed and reported in this well log is in compliance with the Montana well construction standards. This report is true to the best of my knowledge.

Name, firm, or corporation (print) RED TIGER DRILLING INC.

Address P.O. BOX 659 MANHATTAN MT. 59741

Signature [Signature]

Date 9-6-06 License no. 598

LAZY J WATER SYSTEMS

		WELL LOG	
DEPTH, FEET		MATERIAL:	
FROM	TO		
		STREAKS OF GREY CLAY	
510	515	GREY CLAY WITH TRACES OF GREEN	
515	518	SHALE WITH STREAKS OF GREY CLAY	
518	524	BAD GUMBO, GREY CLAY WITH STREAKS OF BLACK SHALE	
524	525	SHALE BLACK, WITH TRACES OF GREEN	
525	541	LITE GREY SANDSTONE	
541	542	CLAY WITH GREY GUMBO	
542	545	LITE GREY SANDSTONE WITH STREAKS OF GREY CLAY	
8 - 18-05	545	LITE GREY SANDSTONE WITH STREAKS OF BLACK SHALE	
567	575	LITE GREY SANDSTONE WITH STREAKS OF BLACK SHALE (FRACTURED)	
		LOST APPROX. 600 GAL. FLUID AND GAINED IT	
575	580	LITE GREY SANDSTONE WITH BLACK SHALE AND TRACES OF CLAY	
580	604	LITE GREY SANDSTONE WITH BLACK AND GREEN SHALE, TRACES OF CLAY	
604	606	LITE GREEN SHALE WITH BLACK AND GREY STREAKS	
606	619	GREEN AND BLACK SHALE WITH CLAY STREAKS	
619	623	HARD BLACK SHALE	
623	665	BLACK SHALE WITH CLAY STREAKS	
665	685	GREY CLAY WITH STREAKS OF BLACK SHALE	
685	698	GREY CLAY WITH STREAKS OF BLACK SHALE	
698	705	SHALE - BLACK AND HARD WITH SOME CLAY	
705	712	GREY CLAY AND BLACK SHALE	
712	715	BLACK SHALE WITH TRACES OF GREY CLAY	
715	725	BLACK SHALE	
725	726	BLACK TO DARK GREY CLAY WITH BLACK SHALE	
726	749	BLACK SHALE WITH TRACES OF CLAY	
749	754	GREY SHALE WITH BLACK STREAKS AND GREY CLAY STREAKS	
754	765	BLACK SANDSTONE WITH TRACES OF WHITE (very hard)	
765	767	GREY CLAY, LITE IN COLOR WITH TRACES OF BLACK SHALE	
767	785	HARD BLACK SHALE	
785	787	GRAY CLAY LITE IN COLOR	
787	790	REDISH BROWN LIMESTONE, BROWN SHALE	
790	800	BLACK SHALE WITH LITE GREY CLAY STREAKS	
800	820	BLACK SHALE WITH LITE GREY CLAY STREAKS	
820	842	GREY SANDSTONE WITH STREAKS, BLACK SHALE AND GREY CLAY STREAKS	
842	866	BLACK SHALE AND GREY SHALE, TRACES OF GREY CLAY	
866	883	GREY STREAKED SHALE WITH LITE GREEN AND BLACK LOST APPROX. 350	
		TO 400 FLUID AT 860'	
883	890	BLACK SHALE WITH GREY CLAY STREAKS AND TRACES OF WHITE CLAY	
890	1012	GREY AND BLACK SHALE WITH STREAKS OF GREY CLAY	
1012	1013	BLACK SHALE , AND DARK BROWN CLAY WITH TRACES OF RED GREEN SHA	
1013	1014	MOSTLY GREEN SHALE WITH TRACES OF RED SHALE AND GREY AND BROWN	
		CLAY	
1014	1015	RUSTY BROWN CLAY WITH BLACK AND GREEN SHALE	
1015	1050	LITE BROWN CLAY	
1050	1055	GREEN SHALE WITH LITE BROWN CLAY STREAKS	
1055	1058	GREEN SHALE WITH RUST COLORED ROCK STREAKS AND GREY CLAY	
1058	1065	GREEN SHALE WITH REDISH ORANGE SHALE AND GREY CLAY STREAKS	
1065	1075	GREEN SHALE AND TRACES OF RUST COLORED ROCK AND LITE BROWN CLA	
1075	1088	GREEN AND BROWN SHALE WITH TAN CLAY STREAKS	
1088	1095	BLACK SHALE WITH GREY CLAY	
1095	1100	GREEN SHALE WITH CLAY	
1100	1105	GREEN AND BLACK SHALE, VERY LITTLE TRACES OF RUSTY RED	
1105	1124	BLACK SHALE, WITH TRACES OF GREEN	

LAZY J WATER SYSTEMS

DEPTH, FEET		WELL LOG
FROM	TO	MATERIAL:
1127	1130	BLACK GREEN SHALE WITH GREY, LITE BROWN CLAY AND TRACES OF RED S
1130	1176	GREY CLAY WITH TRACES OF BLACK SHALE
1176	1201	GREEN AND BLACK SHALE WITH TRACES OF GREY CLAY AND GREY SHALE
1201	1217	GREY CLAY GUMBO
1217	1224	GREEN SHALE WITH GREY CLAY STREAKS AND TRACES OF SANDSTONE
1224	1242	GREY SANDSTONE
		WELL BEGINS TO FLOW
1242	1272	GREEN AND BLACK SOFT SHALE
1272	1278	GREEN AND GREY HARD SHALE
	1278	T.D.

Hallsten, Greg

LVIS, WQ

From: Eric Ossorio [eric@ossoriorealestate.com]
Sent: Tuesday, October 24, 2006 7:44 PM
To: Hallsten, Greg
Subject: FW: comments on ORW due 10/27 - meeting at 3:00pm Wednesday, October 25 at Gallatin Gateway Inn

Dear Mr. Halsten:

The following alarming e mail was received today which suggest that the State of Montana and the DEQ, or perhaps it is just the DEQ, is trying to pull something over on the people of Big Sky as well as Gallatin and Madison Counties though a sham EIS in order to subject the area in Big Sky outlined in the "ORW footprint" to an ORW ordinance that is based on flawed data, is being rushed through channels on a "fast track" unusual for an EI study of this magnitude, has not allowed for community input and is meritless. Furthermore, implementation of this ORW will in all probability be devastating to Big Sky and the local tax bases of Madison and Gallatin Counties.

While all in favor of protecting the environment and our watersheds, based on the information circulated here, I must protest your lack of sensitivity to the community, your heavy handedness in this matter and I am appalled that you would try to fast track an EIS that is based, according to the e mail below, on flawed information.

Please confirm that you will not pursue this matter in such an egregious manner.

Sincerely,

Eric Ossorio

----- Forwarded Message

From: Tracy Jacobson <tracy@riverstopeaks.com>
Date: Tue, 24 Oct 2006 14:09:31 -0400
To: Al Mal <al_mal@yahoo.com>, Ania <ania@mtreco.com>, Anne Stoudt <anne@bigskyrealtyinc.com>, Becka <becka@eralandmark.com>, Becky Pape <bpape@triplecreek.com>, Ben Coleman <crackclimbing@aol.com>, Bert Brandon <bert@riverstopeaks.com>, Beth Leady <bigskycelebrations@yahoo.com>, Brad Betz <info@blackeaglelodges.com>, Braniff Scott <branif@montanarealestateco.com>, Brian Dolan <brian@riverstopeaks.com>, Caroline Henley <henleycaroline@hotmail.com>, Cathy Gorman <cathy.gorman@sothebysrealty.com>, Chris Galovich <chrisbigsky@aol.com>, Chris McEnroe <cmcenroe@bigskyresort.com>, Craig Smit <craig@riverstopeaks.com>, Dan Delzer <dan@delzers.com>, Dan Furlong <danof@3rivers.net>, Dave Kisko <dkisko@ycemail.com>, David Cyr <dlcyr@earthlink.net>, Dennis Rush <drush@spanish-peaks.com>, Dick W <dwbigsy@aol.com>, Don P <don@prudentialmontanare.com>, Eric Ossorio <eric@ossoriorealestate.com>, Ernie <ehallmoose@aol.com>, Grace Young <grace@montanarealestateco.com>, Heather Blair <hberlin@gmail.com>, Heidi and Stewart

10/25/2006

<peacock@imt.net>, Jacquie Persons <jacquie@riverstopeaks.com>, Jason Nelson <moognelson@peoplepc.net>, Jason Parks <jason@mtreco.com>, Jeff Helms <jeff@mtreco.com>, Jenna Thompson <jenna@riverstopeaks.com>, Jerad Biggerstaff <jerad@biggerstaffconstructionmt.com>, Jerry Pape <jpape@triplecreek.com>, Jim Thoreson <jwthoreson@aol.com>, John Colglazier <john.colglazier@gmail.com>, John Delzer <john@delzers.com>, Julie Jenkins <julie.jenkins@sothebysrealty.com>, Justin Klocko <jklocko@montanatitlecompany.com>, Karen Davids <rockinbark@aol.com>, Katherine Fenasse Curral <katherine@riverstopeaks.com>, Katie Brantley <ktbrantley@yahoo.com>, Katie Grimm <katiegrimm@eralandmark.com>, Kevin Butler <kevinbutler@earthlink.net>, Kim O'neil <bigskyinfo@eralandmark.com>, Kirk Dige <kirkdige@eralandmark.com>, Leesa Anderson <Leesa@mtreco.com>, Lindsey Mitchell <lindsey@riverstopeaks.com>, Lisa Knorr <lknorr@montana.net>, Live Water <live.water.properties@home.wyom.net>, Lori Leonard <lorri@bigskyproperties.us>, Lynn Brush <lynnbrush@aol.com>, Maggie Biggerstaff <maggie@biggerstaffmt.com>, Marc Parent <mrp92@hotmail.com>, Marilyn Walsh <alohamarilyn@aol.com>, Marjie Toepfer <marjietoe@aol.com>, Martha Johnson <martha@riverstopeaks.com>, Mary Wheeler <mwheeler@3rivers.net>, Matt Tynan <matt@riverstopeaks.com>, Michael Schreiner <michael@riverstopeaks.com>, Michelle Hicks <michelle@mtreco.com>, Mitch Furr <mitchfurr@eralandmark.com>, Natasza Firth <natasza.firth@prumt.com>, Pam Richards <pam@montanarealestateco.com>, Peter Simon <bshub@yahoo.com>, Ralph Delzer <ralph@delzers.com>, Richard Ladzinski <elink@imt.net>, Ron <ronbigsky@copper.net>, Ron Seher <ronseher@aol.com>, Ron Tabaczka <ronbigsky@cooper.net>, Samantha Breeden <sambreeden@hotmail.com>, Sandy R <sandyrif@mcn.net>, Sara Palmer <spalmer@bostwickproperties.com>, Sarah Gensch <sarah@riverstopeaks.com>, Sarah Oullette <sarah@biggerstaffmt.com>, Sharon B <sharon@biggerstaffmt.com>, Shawna Winter <shawna@mtreco.com>, Stacy_AOL <bigskyrealtor@aol.com>, Terry O <toneill@3rivers.net>, Tim Anderson <tim@mtreco.com>, Tim Cyr <timjcyr@yahoo.com>, Tina Barton <tinasoldonbigsky@aol.com>, Todd Pieroni <todd@barnbroker.com>, Troy Currall <winwintroy@yahoo.com>, Veda Barner <vedabarner@yahoo.com>, Vicky <vicky@eralandmark.com>, Will Brunner <will@riverstopeaks.com>, Yolanda <yolandarealtor@hotmail.com>

Conversation: comments on ORW due 10/27 - meeting at 3:00pm Wednesday, October 25 at Gallatin Gateway Inn

Subject: FW: comments on ORW due 10/27 - meeting at 3:00pm Wednesday, October 25 at Gallatin Gateway Inn

Please read the below email carefully and email your comments to ghallsten@mt.gov
Thank you!

Tracy Jacobson, Assistant to Martha Johnson
Rivers to Peaks Real Estate
PO Box 160730
11 Lone Peak Drive Suite 102
Big Sky, MT 59716
office 406.995.2022
fax 406.995.2024
www.riverstopeaks.com <<http://www.riverstopeaks.com>>

From: Martha Johnson

Sent: Tuesday, October 24, 2006 10:15 AM

Subject: comments on ORW due 10/27 - meeting at 3:00pm Wednesday, October 25 at Gallatin Gateway Inn

All,

The ORW (outstanding resource waters) environmental study is complete and available to read on-line (address below). Please consider either attending or EMAIL YOUR COMMENTS against the ORW status for our river. They are trying to take away local control – obviously if we don't keep the Gallatin River pristine it will severely impact the Big Sky image and our businesses. The Big Sky Community have been amazing stewards of the Gallatin River and should not have this taken away

10/25/2006

from us – today the Blue Water Task Force is taking water samples (as they do on a regular basis) from the Gallatin River with students from Ophir School. Feel free to pass this email along to any/all of your friends and associates!

Meeting this Wednesday (October 25) at 3:00 pm at the Gallatin Gateway Inn. Please make time to attend or send comments – this could shut down development in Big Sky.

Below are some thoughts regarding the ORW:

1. The ORW will shut down almost all of the building and development business in the areas it deems are located within the "ORW footprint", which is defined as being any property that has a 1 year hydrological connection to the main stem of the Gallatin River. That term could encompass any development in the Big Sky area that is not located within the geographic boundary of the Water and Sewer District.
2. The current draft of the Environmental Impact Statement for the ORW shows the "ORW footprint" as encompassing all property that is located along Highway 191 and segments of the South Fork and West Fork rivers. In addition, if the ORW is adopted with the hydrological connection language referred to above, then other areas like the Yellowstone Club, Spanish Peaks Resort Estates, Moonlight Ranch, etc. could be brought under the ORW jurisdiction and shut-down. Again, if your property in Big Sky is located outside of the Water and Sewer District boundary, then you are vulnerable to the risk that the state essentially will confiscate almost all of the development rights associated with that property.
3. There are an estimated 10,000 jobs that are created by all of the economic activity in the Big Sky area and many if not most of those jobs relate to the construction, development and real estate industries. A large percentage of those jobs will be destroyed by an ORW designation. Thus, anybody who is involved in any manner with these industries will be severely affected by the ORW. This economic hit would be devastating to the area and to the tax bases of Gallatin and Madison counties.
4. The EIS prepared by the Department of Environmental Quality contains many serious flaws that would have terrible effects to the Big Sky community as explained above and yet the DEQ is rushing the EIS through with a minimum amount of community involvement and on a fast track schedule that experienced environmental attorneys have never seen before. Usually an EIS, especially one of this magnitude, will take a number of years to adopt. However, since the DEQ is doing the EIS itself and not some company such as a mine operator, all of the usual procedural safeguards and time frames to provide meaningful input from the community into this document are being discarded. It is essential that the DEQ slow the EIS adoption process down in order to give the community a chance to provide its input.

Subject: comments on ORW due 10/27

For those of you who have been following the ORW (Outstanding Resource Water) designation process, the draft EIS

(Environmental Impact Statement) has been completed, and comments in support of or opposed to the designation or information contained within the EIS can be submitted to:

Department of Environmental Quality
Attn: Greg Halsten
PO Box 200901
Helena, MT 59620-0901

Comments must be received by October 27th and can also be emailed to gallsten@mt.gov

The study and draft statement in its entirety can be viewed at <http://www.deq.mt.gov/>

All input is extremely important in this process, so please take the time to be involved and proactive with this.

If you have any questions, feel free to contact me at the Chamber office.

Sincerely,

Marne Hayes
Executive Director
Big Sky Chamber of Commerce
P.O. Box 160100
Big Sky, MT 59716
Office: (406) 995-3000
Fax: (406) 995-3054
www.bigskychamber.com <<http://www.bigskychamber.com>>

Martha Johnson
Broker/Owner
Rivers To Peaks Real Estate
PO Box 160730
11 Lone Peak Drive - Suite 102
Big Sky, MT 59716
406.580.5891 Cell
406.995.2022 Main Office
406.995.7001 Big EZ
406.993.5400 Club at Spanish Peaks
406.995.2024 Fax
www.riverstopeaks.com <<http://www.riverstopeaks.com>>
www.spanish-peaks.com <<http://www.spanish-peaks.com>>

----- End of Forwarded Message

10/25/2006

Hallsten, Greg

From: Jacquie Persons [jacquie@riverstopeaks.com]
Sent: Tuesday, October 24, 2006 12:24 PM
To: Hallsten, Greg
Subject: orw designation

Attachments: image001.jpg; image003.gif



image001.jpg (16 KB)

To whom it may concern,

I oppose the ORW designation on the Gallatin River for a number of reasons. Citizens of this community have been overwhelmingly supportive of the Blue Water Task Force and its mission to protect and monitor the water quality in the Gallatin. We are very lucky to have such a local entity that can really draw in community participation, and provide frequent, ongoing reports about the status of our River. The control of this monitoring should not be removed from this community, or it will most likely be put on the back burner.

Many jobs and lifestyles depend upon a certain amount of growth being able to take place in this area, or Big Sky as a resort will die. We do need to ensure that this growth is monitored closely and that developers be held accountable for following county zoning and planning regulations. If the ORW designation is given to the Gallatin,

We will not only lose out ability to create and maintain jobs in the area, but we will lose the ability to monitor one of our most precious resources. Thanks, Jacquie Persons 406-580-3855



image003.gif (3 KB)

Leanne Roulson

S, LU, WQ

Socio econ
LAND USE SFE #5
WQ Pollution Trade

From: Shawn Regnerus [sregnerus@wildlands.org]
Sent: Friday, October 27, 2006 4:50 PM
To: Hallsten, Greg
Subject: Gallatin ORW DEIS comments
Attachments: ORW DEIS comments.doc

Greg Hallsten – Attached and below are American Wildlands comments on the Gallatin ORW DEIS comments. A hard copy of these comments was mailed Friday, October 27, 2006.



American Wildlands

“Science-based conservation for the Northern Rockies”

Montana Department of Environmental Quality
Directors Office
PO Box 200901
Helena MT 59620-0901

Attn: Greg Hallsten

Please accept these comments on behalf of American Wildlands, (AWL), a non-profit conservation organization based in Bozeman, MT. American Wildlands is dedicated to protecting the wildlands, wildlife, and aquatic integrity of the U.S. Northern Rockies and has been working on federal land management issues for over 25 years. Our members use and enjoy the areas affected by the ORW designation and our organization initiated this process with a petition to the Board of Environmental Review in 2001

We realize the preparation of an EIS is a time consuming and difficult process and thank you and your staff for your efforts. Our comments are focused on three main points, the sufficiency of the economic analysis, the explanation of the impacts of the designation and the effect of the designation on development.

Sufficiency of the Economic Analysis. Economic analysis by its very nature is speculative. The economic impacts of any action depend on future economic condition that are obviously unknown and are only as good as the data they rely on. Given the budget the DEQ had to conduct the EIS it is unrealistic to expect the DEQ to conduct original economic resource and it is assumed that the DEQ had to rely on economic data that was already gathered by other agencies and organizations. It also seems intellectually dishonest at best for the same interests that opposed full funding of the EIS to now criticize the thoroughness of the document and its analysis. However, it appears that the DEIS underestimates the costs on both sides of the equation. It is likely that the costs of meeting the requirements of the ORW will be more expensive than estimated and that more jobs are dependant on real estate development, sales and construction than estimated in the DEIS.

10/30/2006

However the cost of compliance expressed as a percentage of construction may actually be lower than estimated: houses in the Big Sky area are far more expensive than 250,000 median home price cited in the DEIS. A current check of real estate in Big Sky shows the only properties available for less than 250,000 are one bedroom or studio condominiums. Even small two bedroom condos are more expensive than 250,000 and no single family homes, the type of development most likely affected by the ORW are available in the area for less than \$300,000. In fact most bare lots in the footprint are significantly more than \$250,000. The central issue for the economic analysis is the percentage increase in construction costs and the analysis should emphasize the fact that ORW will add to cost of houses but not stop construction. It should also be pointed out that the increase in costs may well be defrayed by increases in value due to protected water quality.

Impacts of ORW Designation – There is a significant amount of fear surrounding ORW designation and much of the fear revolves around the unknown – as this is the first ORW designation in Montana, people do not know what ORW designation entails. Therefore it is important for the DEIS to clearly spell out what the ORW designation does not do. For example it is feared that the ORW designation will hamper winter maintenance and future construction to improve safety on 191. The DEIS should spell out the fact that winter sanding and de-icing is nonpoint and will not be affected and that construction is not permanent degradation and is dealt with through state wide discharge permits. Activities such as silvaculture and agriculture that are also non-point sources should also be addressed more specifically – perhaps in a separate table. While the DEIS already states that existing septic permits are grandfathered, given the public perception, this point also needs to be emphasized and clarified.

Implementation of the ORW and its impact on construction and development – This is the central issue in the DEIS and the most publicly contentious. Property in the Big Sky area and particularly the property along the river and its tributaries that is most likely to be within the footprint is very expensive. Understandably the owners of this property want as much surety as possible regarding whether or not their property is hydrologically connected and the requirements for developing that property. As with the economic analysis, the extent of the footprint is only as accurate as the data relied on and hydro-geology seems to be only slightly less speculative than economics. However, determining with certainty where the footprint is located is vital to the successful designation and implementation of ORW protections. While it may be more accurate to do a site by site analysis for every permit application to determine whether or not it is hydrologically connected, this approach will be very difficult expensive and contentious. It may be more practically feasible to use the best existing information available to determine the geographic extent of the footprint and establish that the ORW requirements apply within this boundary.

There is also seems to be a significant amount of confusion as to how the number of housing units affected by ORW designation was determined. A map showing where the affected units are located would be extremely helpful. For example how many of the units, if any are within the Big Sky Water and Sewer district boundary and can hook up into that system. This information is also needed to determine what type of mitigation would best meet the requirements of the ORW. For example if a majority of the units are located upslope from either the Big Sky Water and Sewer treatment plant or upstream from the juncture of the West fork and the mainstem of the Gallatin, then hooking these units into the district may be feasible. However, if most of the units are located on remote and dispersed lots than other methods of mitigation will be needed.

The EIS should also clarify that under ORW designation, zero discharge for all new construction is not the only way to get back to full build out within the footprint. While the DEIS does suggest that 400 lbs phosphorous will be allowed to be discharged in the footprint under ORW designation, this point should be emphasized. Likewise, although the DEIS does address various methods of reducing nutrient

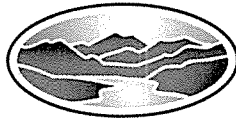
discharge such as advanced onsite treatments, raised sand bed filters and composting toilets it does not specify whether or not these methods may be combined to further reduce nutrients.

Although it may be more of a policy decision than an environmental or economic impact, the issue of pollution trading should also be addressed. For example, if a developer owns two hundred acres in the footprint and is allowed to discharge approximately 40 lbs of phosphorous but is able to develop the property with zero discharge, can the credit for those 40 lbs be sold or traded to other land within the footprint. Likewise if a landowner currently discharges 40 lbs of phosphorous under currently permitted traditional septic systems and that owner reduces the amount of discharge through hookup to a centralized system or improved treatment, could that excess then be traded to other land within the footprint.

The authority to regulate the discharge of pollution into hydrologically connected groundwater is not dependant on ORW designation. There is a significant amount of public misunderstanding around this point. Many landowners assume that without ORW designation, the state does not have the authority to regulate groundwater discharges in hydrologically connected areas as if they were discharging directly into surface waters - which they essentially are. While this point is made in the discussion of alternative three it needs to be emphasized, preferably in the executive summary.

Thank you again for your work in the preparation of the DEIS,

Shawn Regnerus
Water Program Coordinator
321 E. Main St, Suite 418
Bozeman, MT 59715
American Wildlands
406-586-8175



American Wildlands

“Science-based conservation for the Northern Rockies”

Montana Department of Environmental Quality
Directors Office
PO Box 200901
Helena MT 59620-0901

Attn: Greg Hallsten

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Thank you again for your work in the preparation of the DEIS,

Shawn Regnerus,
Water Program Coordinator
American Wildlands

RECEIVED

OCT 26 2006

DEQ
DIRECTOR'S OFFICE

Sovereign

S.

Lance Lann

8855 Sykes Canyon Rd

Bozeman MT. 59715

Dear Sirs:

Charge you to designate the Gallatin River as an Outstanding Resource Water (ORW).

This is perhaps the most beautiful river in the state. It has represented the beauty of Montana to the world in such movies as the film "A River Runs Through It."

This designation makes economic as well as environmental sense. Beauty such as the Gallatin River brings tourism to the state; it makes people and businesses want to relocate to Montana.

Charge you to act on the side of caution and grant ORW status to this river. This relatively unspoiled river is the reason much of the property along and near the river has increased in price and desirability. It is not unreasonable to make people who profit from the river's ~~desirability~~ purity and beauty help protect it. Added cost to development will be minimum and in the long term will help preserve future economic development along and near the river.

Thank you.

Lance Lann



Montana Department of Transportation

Jim Lynch, Director

Brian Schweitzer, Governor

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

October 26, 2006

L, WQ, Leanne

Leanne
GJRGreg Hallsten
Montana Department of Environmental Quality
PO Box 200901
Helena MT 59620-0901Subject: Comments on Draft Environmental Impact Statement (EIS)
For the Gallatin River Outstanding Resource Water (ORW) Designation

Dear Mr. Hallsten:

Thank you for the opportunity to comment on the Draft EIS for the Gallatin River Outstanding Resource Water Designation (ORW). We have the following comments and concerns.

- Under Section 2.3 Proposed Action Alternative, the document includes a statement that "...DEQ could not grant an authorization to degrade the section of the Gallatin River proposed for ORW status for any activity (75-5-316(2), MCA)." When referring to 75-5-316(2) the document indicates "the department (DEQ) may not: (a) grant an authorization to degrade under 75-5-303." This cross-reference to 75-5-303 is confusing because 75-5-303 states that, "existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected unless authorized by the department or exempted from review under 75-5-317, the quality of high-quality waters must be maintained." As the exemptions allowed under 75-5-317 and 75-5-303 are no longer allowable per 75-5-316(2), it is our belief that no exemption for any level of temporary degradation would be permissible if the ORW designation is adopted. This issue must be clarified.

If our interpretation is correct, the proposed ORW designation would directly impact MDT's operation and maintenance of US Highway 191 and Montana Highway 64. For example, MDT would have to alter or curtail the following activities, even though these activities are approved or authorized by DEQ and necessary for MDT's maintenance and operation of US 191 and MT 64:

- Snow and ice control activities.
 - Highway construction activities including safety improvements or upgrades.
 - Emergency responses to earth movements or other natural disasters.
 - Emergency response to vehicle crashes that impact the Gallatin River.
- Under Section 2.6 Related Future Actions, there is additional discussion concerning MDT's "Gallatin Canyon: Slope Flattening/Widening Project". This project includes turn lanes, guard rails, minor widening, slope flattening that will improve the safety of this important transportation corridor for the traveling public. The Draft EIS for the ORW designation states "it is likely that DEQ will require strict adherence to Best Management Practices guidelines in order to reduce the likelihood of nonpoint sources causing degradation to water quality in the proposed ORW reach." However,


other statements within the Draft EIS (section 1.9), along with information presented at the public meeting, contradicts this by indicating nonpoint sources would not be regulated within this reach. This needs to be clarified. Are nonpoint sources regulated or is some higher standard contemplated within this reach, or not?

The information contained in the Finding of No Significant Impact and Environmental Assessment for this project uses standards required by federal and state laws and rules. However, the Draft EIS indicates MDT will be held to a higher standard not anticipated in the NEPA/MEPA process. Mandating a higher standard will increase the costs of the anticipated improvements to the roadway and may result in delays due to changes in design that could result in requirements of additional right-of-way (settling basins, treatment facilities). These changes could result in additional impacts to private and public property, increased costs to the taxpayer, and additional fatalities or incapacitating injuries for the traveling public.

- The Draft EIS also does not address the potential for impacts to the water quality standards due to forest fires or landslides. How does DEQ intend to address this in light of the intent to set "trigger values" described in section 2.3.1? For example, if a fire occurs that increases the sediment load over a several year period until the ground re-stabilizes, will the baseline activities including highway operations be impacted until the trigger values are re-established? DEQ's decision must allow for activities including the operation of US 191 and MT 64 during this period.
- MDT's biggest concern with the proposed ORW designation of the Gallatin River is that MDT, the taxpayers of Montana, and the traveling public will be placed under additional financial, safety, and litigation risk if the action alternative is put forward and implemented.

Lastly, the scoping comments Director Lynch provided to Director Oppen on March 7, 2006 do not appear to be addressed in the Draft EIS. I have attached a copy of those comments and ask that they be considered fully in the final decision and addressed in the final EIS.

Again, thank you for the opportunity to comment.


Sandra Strachl, Administrator
Transportation Planning Division

Attachment

Copies: Jim Lynch
Jim Currie
Loran Frazier
Jean Riley
Lyle Manley
Jeff Ebert

S

Hallsten, Greg**From:** Bob von Pentz [rvonpentz@gmail.com]**Sent:** Tuesday, October 17, 2006 12:55 PM**To:** Hallsten, Greg**Subject:** Gallatin River DEIS Comment

Sowen +

Dear Mr. Halsten,

I have followed with great interest the activities with regard to ORW designation for the Gallatin River and would like to offer what I believe are important points made in the DEIS. Though I am normally a strong supporter of private property rights, in this instance, modest intervention by the government seems warranted as the Gallatin River, is truly a public resource transiting mostly National Forest Land and enjoyed by vast numbers of people each year.

While it is quite natural for anyone to want to protect the a resource as pristine and beautiful as the Gallatin, it is important to consider the economic costs and benefits of such regulation.

1. As the DEIS suggests, substantial income accrues to the region from activities centered on the Gallatin. I will not quibble with their methodology. I do think they failed to fully consider the impact on property values and tax receipts that accrue to the region by having an accessible "blue ribbon" fishery in it midst.
2. It is frightening clear that action must be taken quickly as the development of a very small number of lots under existing rules will put any benefits of a designation out of reach.
3. The cost borne by the developer/owner of property is comparatively trivial to the total cost of development and ownership. Thus the burden is far outweighed by the benefits of such a designation.
4. Thinking beyond the immediate cost/benefit, it is not unreasonable to assume that the value of the resource and surrounding properties and economies would be enhanced by the scarcity value. As time goes on, the value of such a pristine resource will rise by comparison to alternatives that have been degraded by penny wise and pound foolish development.

Thank you for accepting this comment, please note my strong support of ORW designation.

Robert von Pentz
PO Box 320
Gallatin Gateway, MT 59730

10/17/2006

S, LU, WA

Legal

SOLICIT
LAND USE?
WA**Leanne Roulson**

From: Richard Walden [rwwaldenlaw@yahoo.com]
Sent: Friday, October 27, 2006 3:20 PM
To: Hallsten, Greg; Kyle Lanier
Subject: Comments to Draft EIS for Gallatin River Outstanding Resource Water Designation
Attachments: comments on DEIS.doc

Dear Mr. Hallsten,

Attached please find the comments to the Draft EIS for Gallatin River Outstanding Resource Water Designation submitted on behalf of Kyle Lanier and Swan Range Log Homes, LLC.

If you have any questions, please contact me at 918-299-4454 or at email address rwwaldenlaw@yahoo.com.

Thank you,

Richard Walden

Low, Low, Low Rates! Check out Yahoo! Messenger's cheap PC-to-Phone call rates.

10/30/2006



**P.O. Box 161615
Big Sky, MT 59716
406-993-2692**

October 27, 2006

Via E-Mail ghallsten@mt.gov
Department of Environmental Quality
Attn: Greg Hallsten
PO Box 200901
Helena, Montana 59620-0901

Re: Comments
Draft Environmental Impact Statement ("DEIS") for the Gallatin River
Outstanding Resource Water ("ORW") Designation

Dear Mr. Hallsten,

On behalf of Kyle Lanier and Swan Range Log Homes, LLC, please accept these comments to the DEIS for the Gallatin River ORW Designation.

I. DESCRIPTION OF COMMENTORS

Kyle Lanier is an individual and resident of Gallatin County, Montana who recreates and works in the area proposed for ORW designation by the Department of Environmental Quality. Swan Range Log Homes, LLC is an Idaho LLC that is authorized to do business in Montana. Mr. Lanier is the President of Swan Range Log Homes, LLC. The LLC constructs log homes in Gallatin County in the area proposed for ORW designation. Both Mr. Lanier's recreational and business interests will be impacted by the designation of the Gallatin River.

II. ORW DESIGNATION

According to the DEIS, in December 2001, American Wildlands submitted a petition to the Montana Board of Environmental Review ("Board") to initiate rulemaking for the Gallatin River to be designated as an ORW from the border of Yellowstone National Park to the confluence with Spanish Creek. The ORW designation, which is modeled after the Federal Outstanding National Resource Water designation, provides for strict and unyielding regulations on the use of water bodies that are designated ORW. To have a water body designated as an ORW, a person or entity must petition the Board and

the Board must accept the petition. The Board can only accept the petition if it finds that: (1) the water body identified in the petition constitutes an ORW based on specific criteria; (2) the classification is necessary to protect the ORW; and (3) there is no other effective process available that would achieve the necessary protection. MCA 75-5-316(4). For reasons not specified in the DEIS, the Board voted to accept the petition filed by American Wildlands. The acceptance occurred in March 2002.

III. DEIS REQUIREMENTS

Under the Montana Environmental Policy Act ("MEPA"), the Board's decision to accept American Wildland's petition triggered the beginning of an environmental review process, which includes the preparation of an environmental impact statement ("EIS"). See, MCA 75-1-201 (mandating that each state agency prepare a detailed statement for any action that may have an impact on human environment). Given the interrelationship between the State's ORW designation process and Federal laws mandating such a process, the Board's acceptance of the American Wildland's petition most likely triggered a similar mandate under the National Environmental Policy Act ("NEPA"). See, 42 U.S.C. § 4321, et. seq. (mandating the preparation of an EIS for any Federal project having a major effect on the human environment).

Both MEPA and NEPA require an agency to take a "hard look" at the environmental impacts of a given project or proposal. Ravalli County Fish and Game Associates, Inc. v. Montana Department of State Lands, 903 P.2d 1362, 1367 (Mont.1995). These statutes are essentially procedural in that they do not demand that an agency make particular substantive decisions. Rather, they require that agencies take steps to review "projects, programs, legislation, and other major actions . . . significantly affecting the quality of the human environment" in order to make informed decisions regarding these projects, programs and/or legislation. Id. Preparation of an EIS is the primary mechanism used by agencies to take the "hard look" required by both MEPA and NEPA. If the EIS is inadequate, the agency's environmental review will be insufficient. As will be set forth below, the DEIS does not comply with either MEPA or NEPA and is, therefore inadequate. Accordingly, the DEQ's review of the proposed ORW designation was not sufficient.

An EIS contains several requirements. Significantly, an EIS must: (1) adequately explain the reason and need for the proposed action; (2) adequately explore all reasonable alternatives to the proposed action that could accomplish the same purpose; (3) thoroughly and objectively analyze the "no-action" alternative; and (4) provide a sufficiently detailed and accurate analysis of the economic impacts of the proposed action. See, MCA 75-1-201. If these requirements are not met, the EIS will be deemed inadequate and the agency's environmental review of the proposed action will be considered arbitrary and capricious. Ravalli County Fish and Game Association, 903 P.2d at 1366. Because MEPA is modeled after NEPA, Federal case law interpreting NEPA has been held persuasive by the Montana Supreme Court in determining agency compliance under MEPA. Id.

A. Failure to Adequately Explain the Reason for the Proposed Action

First and foremost under both MEPA and NEPA is the need for the agency to adequately explain the need for the proposed action. The DEIS completely fails to satisfy this requirement. The DEQ does not sufficiently explain why the new and extremely strict regulatory requirements present in ORW designation are needed to protect the pristine and already amply protected Gallatin River and its tributaries.

In the DEIS, the DEQ states that the purpose of the ORW designation is to protect existing water quality in the area within the proposed ORW designation. In making this statement, DEQ is in effect stating that the waters within the proposed ORW designation are of high quality. Stated otherwise, the DEQ is admitting that the waters in the Gallatin River are already being adequately protected by existing regulations. This begs the question, why are new and extremely strict regulations now required to accomplish what is already being accomplished?

The DEIS does not have an adequate answer to this question. The only attempt made by the DEQ to answer the question is a repeated assertion that under current regulations, which provide an extensive and strict review process to obtain a discharge permit, a permittee *could* obtain a discharge permit even if said discharge would cause degradation in water quality. The DEQ does not, however, explain the likelihood of such an occurrence or the frequency of such occurrences.

The current non-degradation review process, which is presented in sections 2.2.1 through 2.2.4 of the DEIS, is a cumbersome process that is designed to ensure that no additional point source discharges are permitted along the proposed ORW designation that will degrade current water quality. This process includes obtaining discharge approval from DEQ as well as wastewater permitting from Gallatin County. Preparation of either an EIS or environmental assessment in compliance with MEPA and/or NEPA is required for any application for a discharge permit from either the DEQ or Gallatin County. In short, the current process is strict and thorough and, based upon the current status of the rivers in question, successful.

The current process does, like most reasonable regulations, have a process to allow for exceptions. A permit can be obtained if the permittee can show that there are no economically, environmentally and technologically feasible modification to the proposed project that would result in no degradation, that the proposed project will result in important economic or social benefits that exceed the societal costs of allowing the degradation, that existing and anticipated uses of state waters will be fully protected *and* that the least degrading water quality protection will be used. The DEQ relies heavily upon this exception process to advance the need for the ORW designation which will not allow such exceptions.

To rely on the exception process, the DEQ must show in the DEIS: (1) the likelihood of success and the frequency of use of the exception process; and (2) the reason that water quality is of such importance as to outweigh any other societal problem that would need to be addressed by either the State of Montana or Gallatin County. The DEIS does neither. There is no discussion in the DEIS regarding the number of requests for exceptions and the success rates for these requests. Without such a discussion, the

agency and other readers of the DEIS cannot be sure whether the exception process is in fact a problem worth consideration or just a red herring used by the DEQ to justify the stricter regulations. There is also no discussion in the DEIS that balances the importance of water quality with other societal issues that would warrant an exception. The ORW designation will eliminate any exception. To be sufficient, the DEIS must explain why water quality is of such importance as to prevent state and local governments from making the tough decisions that balance the needs of the represented citizens against the needs of the environment. Without such a discussion, the DEIS is inadequate.

B. The Range of Alternatives is Inadequate

A second problem with the DEIS is its analysis, or lack thereof, of reasonable alternatives. The MEPA requires the DEQ to analyze all reasonable alternatives to the proposed action. MCA 75-1-201(b)(C). The alternative section is “the heart of the environmental impact statement.” Friends of Yosemite Valley v. Scarlett, 439 F.Supp.2d 1074, 1106 (E.D.Cal.2006). “[T]he existence of a viable but unexplained alternative renders an environmental impact statement inadequate.” Id. To satisfy its obligation under MEPA and NEPA, an agency must look at every reasonable alternative with the range dictated by the nature and scope of the proposed action. Id. While the defined purpose of the proposed action may greatly affect the feasibility of alternatives, an agency cannot define its objectives in unreasonably narrow terms. North Carolina Alliance for Transportation Reform v. United States Department of Transportation, 151 F.Supp.2d 661, 686 (M.D.N.C.2001). “If the purpose is defined too narrowly, ‘only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.’” Id. To narrowly define a project so as to eliminate all alternative except for the proposed action would amount to nothing more than a rubber stamping of the proposed action thereby eliminating the opportunity for the agency to choose among alternatives and defeating the purpose of MEPA and NEPA. Metcalf v. Daley, 214 F.3d 1135, 1143 (9th Cir.2000).

With regard to the DEIS, the DEQ too narrowly defined the purpose of the project and thereby analyzed an inadequate number of alternatives. Without any cited authority, the DEQ asserted that the only alternatives that could be reviewed would be alternatives that provided the same level of water quality protection as ORW designation. The DEQ’s assertion is without merit and contrary to the requirements of both MEPA and NEPA.

The purpose of the proposed project is to maintain the current high quality status of the Gallatin River and its tributaries. The proposed ORW designation, which would eliminate most development in the area, is a process that would satisfy the purpose of the proposed project. It is not, however, the only process that would accomplish the purpose. There are regulatory devices available to the State of Montana and/or Gallatin County short of a moratorium on development that would protect that pristine status of the Gallatin River. For example, the current process has been more than effective in keeping the water quality at a high level. If DEQ is concerned that there are too many loopholes in this current process, an alternative exploring the possibility of closing such loopholes should have been explored. The DEQ could also have explored an alternative that tightened the requirements for obtaining discharge and development permits.

Unfortunately, DEQ did not explore such alternatives. Instead, DEQ inappropriately and unreasonably narrowed the purpose of the project. In doing so, DEQ eliminated all but the most extreme alternatives and violated the provisions and the spirit of MEPA and NEPA.

C. The DEIS Inadequately Analyzed the No-Action Alternative

Under MEPA, and NEPA, an agency must complete a meaningful and objective analysis of the no-action alternative. MCA 75-1-201(b)(C)(IV). The no-action alternative is the maintenance of the status quo. In this situation, the no-action alternative would allow the current and successful regulatory process to remain in place.

The analysis of the no-action alternative in the DEIS was far from meaningful and objective. The analysis did not explain whether the current regulatory scheme was or was not working nor did the analysis discuss in sufficient detail the concerns the DEQ had regarding the current scheme. The DEIS analysis of the no-action alternative was also not fair or balanced. The potential problems with the current regulatory scheme were over exaggerated so as to justify the stricter regulations proposed under the ORW designation.

As noted above, the reader of the DEIS is left to wonder whether the current regulatory scheme is working or not. The DEIS indicates that the Gallatin River area is of high water quality. Based on this statement, one would conclude that the current scheme is working and no extra regulatory measures are required. This apparently is not the case since the DEQ is advocating the promulgation of stricter regulations that DEQ claims is needed to protect the water quality of the River. Missing in the DEIS, however, is any meaningful explanation regarding the failures of the current regulatory scheme. Why the need for the new regulations? Has there been a recent and dramatic decline in water quality that would warrant such drastic measures? Are the current regulatory provisions incapable of maintaining the current quality of the River? In short, what is the environmental reason for implementing such restrictive measures? Because of the inadequacies of the DEIS, these questions are not sufficiently answered.

The DEQ goes to great lengths to demonstrate that under the no-action alternative, the water quality in the Gallatin River *could* be degraded. The DEIS contains predictions that *potential* development and *possible* exceptions obtained by permittees and the DEQ's apparent *inability* to properly evaluate discharge and wastewater permit applications *might* lead the further degradation of the River. These *predictions* are nothing more than that, *predictions*. There is no hard evidence provided in the DEIS that support the assertions made by the DEQ, let alone support the implementation of regulations that will shut down all of the development in Gallatin County.

The no-action alternative is nothing more than a narrative that attempts to convince the reader that the current scheme is incapable of maintaining the water quality of the Gallatin River. The DEIS is trying to convince the reader of this alleged fact so that new and unyielding regulations can be implemented that will substantially curtail development in and around the proposed ORW designation. To justify such regulations, the DEIS must contain more than narratives and predictions, it must contain cold hard

scientific facts demonstrating that the current regulatory scheme is failing. The DEIS does not contain such facts and is, therefore, deficient.

C. The Economic Impact of the Proposed Action is Insufficient Analyzed

Finally, both MEPA and NEPA require an agency to discuss the socio-economic impacts of the proposed action. In fact, a socio-economic analysis is a significant part of the MEPA and NEPA process. Courts have recognized that “inaccurate economic information may defeat the purpose of an [EIS] by ‘impairing the agency’s consideration of the adverse environmental effects’ and by ‘skewing the public’s evaluation’ of the proposed agency action.” Northwest Environmental Advocates v. National Marine Fisheries Service, 460 F.3d 1125, 1143 (9th Cir. August 23, 2006). In this case, socio-economic analysis conducted by the DEQ was grossly insufficient and designed solely to skew the public’s evaluation of the proposed action.

The focus of the DEQ’s economic analysis is the proposed action’s impact on fishing and related tourism revenues. According to the DEIS, the proposed action will greatly benefit these revenue generating sources. The DEIS also suggests that the proposed action will also benefit property values by decreasing development in the area. The DEIS then goes on to explain, briefly, that there will be a loss of revenue from development but said loss of development will be offset by an increase in development outside the ORW designation and from the use of alternative and far more costly wastewater treatment systems. The DEIS appears to suggest that the economic impact to development would be somewhere around seven million dollars (\$7,000,000.00).

The DEIS’ understatement regarding the economic impact on development in the area borders on the absurd. According to the DEIS, the proposed regulations will decrease the amount development from 692 lots to seventy-five (75). This is a decrease of 617 lots or approximately eighty-nine percent (89%) of the current proposed development in the area. Swan Range Log Homes, LLC is currently one of the business developing lots in the area. The lots being developed range in price from one million to five million dollars (\$1,000,000.00 to \$5,000,000.00). If the 617 lots are sold at the one million dollar range, the loss of income alone from the new regulations would be approximately 617 million dollars. This amount does not even begin to take into consideration the loss of tax revenue from the sale of these lots to the loss of revenue generated by the various businesses involved in the development of the lots. This amount also does not take into consideration the massive amounts of jobs that will be lost because of the reduced development.

The new regulations will not simply reduce development in the area by a small measure. The new regulations will virtually end all development in the area. This is a classic case of competing interests, economics versus the environment. In order for the DEIS to be adequate, the document must accurately discuss the impacts and benefits to these competing interests including an accurate and honest discussion regarding economic impacts associated with the loss of approximately 617 developable lots in some of the most attractive areas in the country. It may be, though highly doubtful, that despite the harsh economic impact, the public will prefer the new regulations. The public should, however, be given accurate and honest information regarding the impact before such a decision is made. By giving such honest and accurate information, the DEQ will be

advancing the goals, purposes and ideals of MEPA and NEPA. Unfortunately, the DEIS does not give such honest and accurate information. Accordingly, the DEIS does not advance MEPA and NEPA and is, therefore, inadequate.

IV. CONCLUSION

For the reasons set forth herein, Kyle Lanier and Swan Range Log Homes, LLC asserts that the DEIS is inadequate and should be revised to come into compliance with MEPA and NEPA.

Sincerely,

/s/ Richard W. Walden

Richard Walden, Attorney
Swan Range Log Homes, LLC

Chris Wasia
1020 W. Villard
Bozeman, MT 59175
406-582-8199
wasia4@msn.com

Legal
Land use
WA

(36)

October 27, 2006

Department of Environmental Quality
Attn: Greg Halsten
PO Box 200901
Helena, MT 59620-0901

Copy sent via e-mail to: ghallsten@mt.gov

Re: Gallatin River ORW Designation **and** Proposed ARM Amendments

Dear Mr. Halsten:

As a landowner in Big Sky, I am writing to voice my opposition to adopting the proposed ORW status for the Gallatin River (ARM 17.30.617). I also oppose the proposed modifications to ARM 17.30.638. At the Public Hearing on Wednesday October 25, 2006 we heard some interesting and sophisticated reasons for and against the designation of the Gallatin River as an ORW based on MDEQ's Environmental (and Economic) Impact Study. My comments are as follows:

Proposed ARM 17.30.638 Amendment

I am concerned that this process appears to blend two separate actions into one absolute issue. The proposed amendment of the Administrative Rules of Montana (ARM) 17.30.638 probably has little to do with the designation of the Gallatin River as an ORW. From what I can tell, the Gallatin River EIS is not incorporated by reference or any other way within the proposed ARM 17.30.638 Amendment and may never be seen or used again once the ORW designation is completed. It is through this perpetuated illusion that the general public may have been lead to believe the Gallatin River EIS and proposed ARM 17.30.638 Amendment are linked and some how inseparable... and the "footprint area" will always be the limits of the ORW impacts as discussed in the 2006 EIS. I am concerned that this is not the case. I am surprised it is being presented to the tax paying citizens this way.

I have read the proposed ARM Amendment 17.30.638 and in my opinion, it contains notoriously unacceptable and unclear language. The three words “direct hydrological connection” have historically provided little guidance. This has resulted in issues that should be resolved by a scientific and technical process, instead being resolved in the political arena.

“direct hydrological connection” – What does this mean?

I’m not sure the expert hydro-geologists even know or agree what this means. I think the Department of Natural Resources and Conservation (DNRC) is still trying to figure out what those three words mean. They are too vague and have a terrible precedence associated with their connotation or lack thereof. “Direct hydrological connection” could mean just about anything. Why don’t we define what we are talking about? Maybe we should reference a “footprint” area based on some sort of groundwater travel time criteria?

It is my understanding the DNRC has struggled with these three words for the better part of a decade. I don’t think it is a good idea to subject the MDEQ processes to the same level of outside manipulation. It is my understanding that these three little words have held up multiple subdivisions for years and in the end may take a Supreme Court Judge to decide what they currently mean. I would ask that we learn from history and not repeat it. Do the tax paying citizens of Big Sky and the Gallatin Canyon want the fate of their natural, built and economic environments to possibly be manipulated, delayed and ultimately decided by a Supreme Court Judge? Is this the path we are creating?

“Any new or increased source discharging to ground water that has a direct hydrological connection to an ORW is prohibited if the discharge, either by itself or after taking into consideration cumulative effects of other sources that are subject to the prohibitions of the ORW designation...” – What does “taking into consideration” mean? Do we have any other rules or criteria suggesting what “taking into consideration” means? How are we to define cumulative effects? Is it only my neighbors’ drainfield? Or the entire subdivision 2 miles away? And what “are other sources”? It seems arbitrary and unpredictable. Shouldn’t we define what “other sources” are a little more... somewhere? It seems to be a set up for multiple interpretation at a later date rather than telling the tax paying citizens what the rules are now.

MDEQ Gallatin River EIS

I believe the Gallatin River EIS may be in error or potentially invalid because it did not take into consideration the proposed amendment to ARM 17.30.638 and evaluate its cumulative impact with ARM 17.30.617 on the Gallatin River area. No where in the EIS could I find an estimate of the likeliness of legal expansion of the “footprint” area due to notoriously unclear language used in the wordsmithing of the proposed ARM 17.30.638 Amendment. The three words “direct hydrological connection” have historically been problematic causing natural, built and economic environments to be manipulated by outside interests, reduced property values, created delays, takings issues and, in some cases, the necessity of a decision from a Supreme Court Judge five to ten years later. I believe this impact has been well documented with the Department of Natural Resources and Conservation (DNRC) and was overlooked in the Gallatin River ORW EIS. The potential economic impact of this omission is significant and could bring measurable economic harm to the region on the order of magnitude of 100’s of millions of dollars per year, contrary to the Gallatin River EIS conclusion. I am concerned that the net effect of this oversight would likely be tantamount to a lawyer induced moratorium in slow motion without proper cause, study, notification etc. Is this the path we are creating?

Existing Parcels of Land

The proposed ARM appears to grandfather existing discharge permits but fails to address existing parcels of land such as 20 acre parcels. I believe this potential impact was overlooked in the Gallatin River EIS as well. Existing parcels are tracts of land ranging from 1 acre to hundreds of acres in size that have a building right(s) associated with them but do not have a structure currently on them and therefore do not have an existing discharge permit. In order to avoid a takings issue it is suggested that these existing parcels be grandfathered as well.

I thank you for the opportunity to share my concerns. I hope they can help with this process. It is my belief that we all want a clean river as much as we want to understand the truth and the real cause and effect of such major proposed changes.

Sincerely,
Chris Wasia

S

Leanne Roulson

From: SUZANNE RALPH WIEGMANN TRUMAN [mingers10@msn.com]
Sent: Friday, October 27, 2006 10:27 AM
To: Hallsten, Greg
Subject: Gallatin River ORW -DEIS

+Vote

Suzanne

Dear Mr. Halsten,

We are writing in regard to the DEIS for the Gallatin River. We strongly urge you to support the designation of the Gallatin River, from the Yellowstone boundary to Spanish Creek, as Outstanding Resource Water. Please help to protect our wild river from future pollution and degradation. Please preserve the present water quality by designating the Gallatin as OUTSTANDING RESOURCE WATER.

The Gallatin River IS an Outstanding Resource Water for Montanans AND the thousands of visitors that come here to fish, bird, and enjoy the cold, clear, clean river and riparian areas. Designate the Gallatin River as Outstanding Resource Water now! Besides it just being the right thing to do, protecting the Gallatin River also protects revenue.

Sincerely,
Ralph Wiegmann &
Suzanne Truman
Bozeman, MT
406.556.1450

L, S

Hallsten, Greg

From: said zarrabian [said@sbcglobal.net]
Sent: Tuesday, October 24, 2006 11:30 AM
To: Hallsten, Greg
Subject: ORW Status

As the owner of 5 lots (3 in Spanish Peaks Club and 2 in Yellowstone Club), I am very concerned about the speed of this process.

As such, I would like to see more time dedicated to evaluating the challenges such designation would bring for your partners and home owners.

We need to make sure that such designation does not impact our ability to build our own personal home, as well as does not negatively and irreparably impact my business' ability to build for sale residences in the Big Sky area.

Regards

Saiid Zarrabian
Lone Peak Homes, Inc.

39

Hallsten, Greg

From: DAD3436@aol.com
Sent: Monday, October 23, 2006 10:48 PM
To: Hallsten, Greg
Subject: ORW

THE GALLATIN RIVER IS TO IMPORTANT TO MONTANA FOR RECREATION AND BEAUTY OF THE RIVER
TO HAVE IT DESTROYED BY BIG SKY POLLUTION.

THIS IS A HEAVILY USED RIVER BY THOUSANDS OF RECREATIONISTS AND TO SEE IT GO
UNPROTECTED WOULD BE A TRAGEDY.

IT'S TIME TO PROTECT THIS BEAUTIFUL RIVER FOR THE PRESENT AND FUTURE OF THE PEOPLE OF
MONTANA AND OUR TOURIST VISITORS.

PLEASE MAKE THE RIGHT INTELLIGENT DECISION AND DECLARE THIS AN ORW DESIGNATED RIVER.

THANK YOU

CHARLES ANSLEY
BOX 147
120 N 6TH AVE EAST
THREE FORKS, MT 59572

dad3436@aol.com

10/24/2006



Ms. Amy F. Davis
PO Box 715
Gallatin Gtwy, MT 59730

Oct. 12, 2006

Mr. Greg Hallsten
DEQ Director's Office
PO Box 200901
Helena, MT 59620

RECEIVED

OCT 16 2006

DEQ
DIRECTOR'S OFFICE

Dear Mr. Hallsten:

I am writing to comment on the draft EIS concerning granting ORW status to the Gallatin River between Big Sky and Spanish Creek.

I am very strongly in favor of granting ORW status. I live near the Gallatin River on Williams Road, which is just north of Spanish Creek. I run along the old highway, which borders the ~~river~~ Gallatin river at least 4 days a week, and I enjoy seeing the abundant wildlife including osprey and belted kingfishers. I almost always see people ~~and~~ fly fishing in the river near the Williams Road bridge, and their cars variously have MT and out of state license plates. I also hike in the Gallatin Canyon on a regular basis.

I think it is an outrage to permit the dumping of untreated sewage in the Gallatin River. I urge you to designate the Gallatin River an ORW, which it surely is, and to require that any effluent dumped in the river be treated according to the very best technology and engineering available. And any effluent

or inadequately treated sewage

which cannot be treated in a manner which
will make it non-harmful should be prohibited,

Sincerely,

Amy F. Davis

AMY F. DAVIS
220 E. Williams Rd
PO Box 715
Gallatin Gateway, MT 59730

(41)

Hallsten, Greg

From: Ron DeArmond [ron_dearmond@hotmail.com]
Sent: Tuesday, October 24, 2006 1:50 PM
To: Hallsten, Greg
Subject: Gallatin ORW designation.

I'd like to go on record that, after reviewing the background and information available, I strongly support the ORW designation for the Gallatin River.

Thank you,

Ronald E. DeArmond

2400 Durston #82

Bozeman, MT 59718

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10/24/2006

42

Hallsten, Greg

From: Brian Dolan [bdolan@riverstopeaks.com]
Sent: Tuesday, October 24, 2006 10:43 AM
To: Hallsten, Greg
Subject: Comments on ORW

Hello,

I am currently working in Big Sky as a real estate agent and I moved here from the East Coast to do so. I moved to Montana for the beautiful scenery and the wonderful job opportunities that are available here in the Gallatin Valley. I also moved here to escape the arcane legislation that was being passed to control the lives and strangle the livelihoods of the people back east.

This ORW is such a terrible idea I do not even know where to begin! The stated goal is to maintain the pristine nature of the Gallatin River and its tributaries. This is a noble goal in and of itself but it is not a goal that we need your help to attain. It is a goal that we here in Big Sky have taken seriously as a community for many years. Our businesses are built on the beauty and unspoiled nature of the Gallatin Valley and Big Sky in particular. We have worked hard to maintain this beauty over the years by responsibly managing development and construction. Your true goal in this ORW is to remove control from our hands, the people who have been the proper and careful stewards of the land, and place it in your hands, the people who are not here, do not live here and do not care if you arbitrarily ruin the lives and livelihoods of the people in the Gallatin Valley. We have saved the Gallatin River before; we will save it from your careless meddling this time as well.

I am fully against every aspect of this ORW and I fully expect that you will hear the people and stop your plan to take away our lives and livelihoods.

Sincerely,

Brian Dolan

Brian Dolan
Associate
Rivers to Peaks Real Estate
PO Box 160730
11 Lone Peak Drive, Suite 102
Big Sky, MT 59716-0730
Cell: 406.579.9465
Toll Free: 877.995.3100
Office 406.995.2022
Fax 406.995.2024
www.riverstopeaks.com

10/24/2006

From: Kris Ellingsen [junewalk@imt.net]
Sent: Friday, October 27, 2006 11:59 AM
To: Hallsten, Greg
Subject: response to DEIS re: Gallatin as an ORW

Dear Greg Hallsten,

I have just perused the Draft Environmental Impact Statement for designating the Gallatin River as an ORW and am writing to say that to describe it as adequate and accurate is rather an understatement. I am impressed with the detailed inventory and analysis of aquatic, biotic, hydrologic, and socio-economic factors in this important decision.

As an ecologist by training, I know that habitat preservation is the best overall strategy we have to conserve and protect our natural heritage. I've also come to view Homo sapiens as a species with characteristics of both "r" and "K" selection, and to believe that the best thing I can do is support any action that maximizes the "K" and minimizes the "r." As I view the impact of growing human-initiated development in the Gallatin Valley (I grew up in Billings and have lived in Bozeman for thirty years), I support any action that minimizes or halts the invasion of weedy species, including my own, from the ground on up.

The DEQ has said it best in just a few words in the DEIS - "... if less development, less ground disturbance..." Everything follows from that.

Thanks for your consideration,

Kris Ellingsen
M.S., Ecology and Evolutionary Biology
M.S., Health and Human Development

44

Hallsten, Greg

From: Lydia Garvey [wolfhowlmama@yahoo.com]

Sent: Wednesday, October 18, 2006 9:01 PM

To: Hallsten, Greg

Subject: Designate Gallatin River an "Outstanding Resource Water" ! (comment DEIS)

I strongly urge you to protect this spectacular, unique area that needs to remain high quality waters for high quality of life & healthy economy for humans, also for wildlife & ecosystem balance. Don't make it a sacrifice area. Do your job- Protect Our Public lands & waters!

Your attention to this most urgent matter would be much appreciated by all present & future generations of all species.

Thank you Lydia Garvey 429 S 24th st Clinton OK 73601

How low will we go? Check out Yahoo! Messenger's low PC-to-Phone call rates.

10/19/2006

45

Hallsten, Greg

From: DennisGru@aol.com

Sent: Wednesday, October 18, 2006 12:28 PM

To: Hallsten, Greg

Subject: Gallatin River - ORW Statis

With all the development in the Gallatin River area we do need more protection.

Please consider the Gallatin for ORW status.

Dennis Grundman
POBox 161018
Big Sky, MT 59716
406 995 3201

10/18/2006

46

Hallsten, Greg

From: Katherine Johnson [kpsjohnson@yahoo.com]
Sent: Tuesday, October 24, 2006 12:22 PM
To: Hallsten, Greg
Subject: Help Protect the Gallatin River

Dear Mr. Hallsten,

I wanted to let you know that I support the designation of the Gallatin River as an Outstanding Resource Water. It is a wonderful river that I care deeply about and hope that it will remain wonderful for many years to come.

Sincerely,

Katherine PS Johnson
5323 Montrose Drive, Dallas, TX 75209
kpsjohnson@yahoo.com

Faye Kommers <fkommers@yahoo.com> wrote:

Hi friends,

I just thought I'd let you know about this opportunity to send a quick email in support of designating the Gallatin River an Outstanding Resource Water. That is really all you have to say unless you want to go into more detail. And you don't have to be a Montana resident to comment.

More info is provided below and if you have any questions, feel free to ask me. Thanks for considering this!

Your friend the tree hugger,

Faye

<http://www.n-email.com/etapcontent/AmericanWildlands/its%20outstanding.jpg>

After six years of work to designate the Gallatin River an "Outstanding Resource Water," we are nearing the end of the process. The Draft Environmental Impact Statement (DEIS), which analyses the potential impacts of the proposed designation as well as the potential impacts of alternatives, was released for public review and comment in September. Please show your support for the ORW designation by commenting on the DEIS by **October 27th**.

Background

American Wildlands has led a group of more than 2,000 concerned citizens and 200 businesses toward designating a 38 mile stretch of the Gallatin River in southwest Montana as an "Outstanding Resource Water" (ORW). American Wildlands has proposed that the designation stretch runs from the Yellowstone National Park boundary to Spanish Creek. An ORW status will protect the Gallatin from permanent degradation in water quality, preserving the current quality of the water for future generations.

Impacts of the ORW designation

Without ORW designation, the Gallatin may die a death of a thousand cuts. Nutrients such as nitrogen and phosphorous from traditional septic systems and the effluent from any future sewage treatment systems have the potential to significantly degrade the water quality in the Gallatin, threatening the riparian ecosystem that is dependant on the river's clean cold water. Sections of the Gallatin are already seeing decreased populations of pollution-sensitive species such as stone flies, as well as an increase of pollution-tolerant species due to increased nutrients from effluent such as midges.

If we are successful in designating the Gallatin, future development on land where the discharge from septic tanks would reach the River within one year would only be permitted if the developer can insure that the effluent will not degrade the current water quality in the River. This is important because the numeric standards for nutrients in surface waters, which are based on drinking water standards, allow for up to 10ppm of nitrogen. However, much lower levels can be fatal to species like trout and stoneflies. Even the non-degradation standards in the Clean Water Act are not enough to protect high quality waters like the Gallatin because they don't take into account the combined impacts of all development throughout the drainage.

We **can** protect the Gallatin with an ORW designation while allowing communities along the Gallatin like Big Sky to continue to grow. The Big Sky Water and Sewer District currently has the best sewage treatment plant in Montana, with no discharge into surface waters. So, new structures within that sewer district will not be restricted by the ORW. In addition, many individual homes in the area but outside of the Big Sky Water and Sewer District are already using state-of-the-art onsite treatment to significantly reduce nutrient discharge into the Gallatin. With all of the effort that has been expended to protect the Gallatin, it would be a shame to allow future, unregulated development to pollute what the community has worked hard to protect.

Points to consider when writing your comments:

- Protecting the Gallatin's outstanding water quality will only add 1-3% to the cost of a new home (for alternative septic treatment) built on land where the discharge from septic tanks would reach the River within one year.
- The Gallatin is an important part of the quality of life that draws so many people to live and visit southwest Montana.
- The Gallatin is one of the most heavily fished and frequently floated rivers in southwest Montana, providing numerous jobs and an economic player in the local community.

Comments must be received by **October 27th** to:

Department of Environmental Quality

Attn: Greg Halsten

PO Box 200901

Helena, MT 59620-0901

Comments may also be e-mailed to ghallsten@mt.gov

All-new Yahoo! Mail - Fire up a more powerful email and get things done faster.

(47)

Leanne Roulson

From: Doug McClelland [demac@cablemt.net]**Sent:** Wednesday, October 25, 2006 4:43 PM**To:** Hallsten, Greg**Subject:** Gallatin river

I support designating the Gallatin River as an Outstanding Resource Water. Having lived in Bozeman for 25 years and Montana for most of my life, I can truly say that the Gallatin is one of my favorite rivers both for its scenic beauty as well as the recreational resources. Many family picnics and fishing trips have occurred on the Gallatin and we have also enjoyed driving through Gallatin Canyon numerous times on our way to Big Sky and West Yellowstone. I would like to see the Gallatin protected through the Outstanding Resource Water designation.

Sincerely,

Liza McClelland

Doug and Liza McClelland
demac@cablemt.net

10/30/2006

48

Hallsten, Greg

From: TandDMcMahon [mcmahon@bigsky.net]

Sent: Tuesday, October 24, 2006 1:10 PM

To: Hallsten, Greg

Subject: Gallatin ORW designation

Mr Hallsten: I am writing in support of the ORW designation for the Gallatin River. Having worked in the watershed since the early 1990s, I have seen firsthand both the unique characteristics of this watershed and the need for protection and manageable growth. ORW will help keep the Gallatin from the insidious and hard to measure quality decline that will turn it into just another unremarkable and homogenized river system.

Thank you for the opportunity to comment,

Thomas McMahon

417 Lexington Dr.

Bozeman, MT

10/24/2006

Hallsten, Greg

From: Anna Patterson [atpatterson@mac.com]
Sent: Wednesday, October 25, 2006 7:48 AM
To: Hallsten, Greg
Subject: supporting the Gallatin

I'm writing to help support the decision to designate the Gallatin River as an ? Outstanding Resource Water?. It seems obvious that this important resource to our state be protected from possible pollution and other elements that we can control. Thank you for listening.

Anna Patterson
Bozeman, MT

Hallsten, Greg

From: RRitter345@aol.com
Sent: Saturday, October 21, 2006 9:07 AM
To: Hallsten, Greg
Subject: (no subject)

I strongly support the effort to designate the Gallatin River an outstanding river water. Your support is requested.

Robert Ritter
P.O. Box 704
Gallatin Gateway Mt. 59730

(51)

Hallsten, Greg

From: Suzanne Schreiner [sschreiner@rockymountainmortgage.com]
Sent: Tuesday, October 24, 2006 3:27 PM
To: Hallsten, Greg
Subject: Outstanding Resource Water Designation

Dear Greg-

I'm sending this email in place of attending the meeting in Gallatin Gateway tomorrow due to a conflict with a memorial service in Big Sky for a longtime local which many of us will be attending.

We, along with many other affected landowners, acknowledge the value of a clean environment, including the prestige Gallatin River as a blue ribbon trout stream, along with a recreational resource. It is one of many things which attribute to the property values in and around Big Sky, including the clean environment which also makes the community thrive as an economic engine in the two counties- Madison and Gallatin. Many landowners and full time residents of Big Sky and the Gallatin Canyon have taken many positive steps, prior to the Petition for the ORW designation, to ensure that the water in the Gallatin River remains clean and prestige and that the development in the Big Sky area take place in a manner consistent with the approved growth policy and state environmental and water quality laws. Therefore, we firmly feel there is no need for the proposed, preferred alternative, which effectively appears to be a conclusion in search of a process.

Thank you for your time, Greg.

Andrew and Suzanne Schreiner

*Suzanne Schreiner
Managing Broker
Rocky Mountain Mortgage Funding
406-993-9342 Phone
406-993-9332 Fax
Corporate # 524
Entity # 525*

--
No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.1.408 / Virus Database: 268.13.11/494 - Release Date: 10/24/2006

10/24/2006

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Dear Mr. Halsten,

We strongly urge you to designate the Gallatin River as an Outstanding Resource Water. This designation would protect the riparian ecosystem of the Gallatin from Yellowstone to Spanish Creek, keeping the river clean and cold. My husband and I just returned from a vacation to Montana and we saw for ourselves how beautiful the area around the Gallatin is. Much work has already been done to protect the Gallatin and it would be a shame to allow it to become polluted now by increased development. The river provides jobs and recreation, and draws people to southwest Montana to live. Designating the river an ORW will ensure that it does not become degraded by effluent from nearby development. We support this designation and hope you will too.

Sincerely,

Kathleen & Dianne Schumery

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OCT 23 2006

DEQ
DIRECTOR'S OFFICE

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Hallsten, Greg

From: Bill and Carol Steele [scl@uslink.net]
Sent: Sunday, October 22, 2006 8:51 PM
To: Hallsten, Greg
Subject: Please protect the Gallatin River as an "Outstanding Resource Water."

Dear Mr. Halsten,

I am writing to support classification of the Gallatin as an ORW. The Gallatin is famous throughout the U.S. as a fantastic wild river for fishing and floating. This is a "no-brainer": Clearly the Gallatin deserves all the protection it can get.

Sincerely,
Bill Steele
21950 County Road 445
Bovey, MN 55709